

United States
Circuit Court of Appeals
For the Ninth Circuit.

PAUL C. BATES,

Plaintiff in Error,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Oregon.

FILED

AUG 23 1923

F. D. MONROE,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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FRANK S. SENN, Yeon Building, Portland, Oregon, and WILBUR, BECKET & HOWELL, Board of Trade, Portland, Oregon, for the Plaintiff in Error.

DEVINE, HOWELL, STINE & GWILLIAM, Ogden, Utah; A. W. AGEE, Ogden, Utah; WILLIAM A. MUNLY, Board of Trade, Portland, Oregon, and JAMES G. WILSON, Platt Building, Portland, Oregon, for the Defendant in Error.

Citation on Writ of Error.

United States of America,
District of Oregon,—ss.

To Oregon-American Lumber Company, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Paul C. Bates is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 31st day of May, in the year of our Lord, one thousand nine hundred and twenty-three.

R. S. BEAN,
Judge.

State of Oregon,
County of Multnomah,—ss.

Service of within citation on writ of error accepted in Multnomah County, Oregon, this 31st day of May, 1923.

WM. A. MUNLY,
Of Attorneys for Defendant.

[Endorsed]: No. ——. United States District Court, District of Oregon. Paul C. Bates, vs. Oregon-American Lumber Company. Citation on Writ of Error. Filed June 1, 1923. G. H. Marsh, Clerk. By ———, Deputy Clerk. [1*]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

PAUL C. BATES,

Plaintiff in Error,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant in Error.

*Page-number appearing at foot of page of original certified Transcript of Record.

Writ of Error.

The United States of America,—ss.

The President of the United States of America to
the Judge of the District Court of the United
States for the District of Oregon, GREET-
ING:

Because in the records and proceedings, as also
in the rendition of the judgment of a plea which is
in the District Court before the Honorable Robert
S. Bean, one of you, between Paul C. Bates, plain-
tiff and plaintiff in error, and Oregon-American
Lumber Company, defendant and defendant in er-
ror, a manifest error hath happened to the great
damage of the said plaintiff in error, as by com-
plaint doth appear; and we, being willing that er-
ror, if any hath been, should be duly corrected, and
full and speedy justice done to the parties aforesaid,
and, in this behalf, do command you, if judgment
be therein given, that then, under your seal, dis-
tinctly and openly, you send the record and pro-
ceedings aforesaid, with all things concerning the
same, to the United States Circuit Court of Ap-
peals for the Ninth Circuit, together with this writ,
so that you have the same at San Francisco, Cali-
fornia, within thirty days from the date hereof, in
the said Circuit Court of Appeals to be then and
there held; that the record and proceedings afore-
said, being then and there inspected, the said Cir-
cuit Court of Appeals may cause further to be done
therein to correct that error, what of right and

according to the laws and customs of the United States of America should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States this 31st day of May, 1923.

[Seal] G. H. MARSH,
Clerk of the District Court of the United States
for the District of Oregon.

The within writ of error was duly served on the District Court of the United States for the District of Oregon, on May 31, 1923, by lodging a copy thereof on May 31, 1923, with the undersigned as the clerk of said court.

G. H. MARSH,
Clerk, United States District Court, District of
Oregon.

[Endorsed]: No. L-8889. In the U. S. Circuit Court of Appeals for the Ninth Circuit. Paul C. Bates, Plaintiff in Error, vs. Oregon-American Lumber Co., Defendant in Error. Writ of Error. Filed May 31, 1923. G. H. Marsh, Clerk, United States District Court, District of Oregon. By _____, Deputy Clerk. [2]

In the District Court of the United States for the
District of Oregon.

November Term, 1921.

BE IT REMEMBERED, that on the 27th day of January, 1922, there was duly filed in the District Court of the United States for the District of Ore-

gon a complaint, in words and figures as follows,
to wit: [3]

In the District Court of the United States for the
District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON AMERICAN LUMBER COM-
PANY, a Utah Corporation,

Defendants.

Complaint.

Plaintiff complains of defendant and for cause
of action alleges:

I.

That during all the times herein mentioned and
at the time of the commencement of this action,
plaintiff was and is now an inhabitant, citizen and
resident of the State of Oregon, and domiciled in
the city of Portland, Oregon, and engaged in the
insurance business as his vocation.

II.

That during all the times herein mentioned and
at the time of the commencement of this action,
the defendant the Oregon American Lumber Com-
pany was and is now a corporation duly organized
and existing under and by virtue of the laws of the
State of Utah. And during all the times herein
mentioned was and is now an inhabitant, resident
and citizen of the State of Utah. That during all
the times herein mentioned the defendant was and

is now duly licensed to do business in the State of Oregon.

III.

That during all the times herein mentioned this defendant was the owner of the following described premises: Southeast quarter of Section 32, Southwest quarter of Section 33, South half of Section 34, Southwest quarter of Section 35, South half of Section 36, in Township 5 N. 6 W. Also Northwest quarter of Section 5, West half and Northeast quarter of Section 4, West half of [4] Section 3, North half of Section 2, in Township 4 N. 6 W., aggregating 2,431.24 acres; situated in Clatsop County, State of Oregon.

IV.

That during the year 1920 and on or about November first, 1920, this defendant duly authorized and employed plaintiff to secure a purchaser for all the foregoing property, and promised and agreed to pay plaintiff 5% of the agreed purchase price of said property; whereupon plaintiff entered upon the performance of his said contract and agreement.

V.

That in accordance with said agreement and contract of hiring, this plaintiff did secure a purchaser, to wit: A. S. Kerry and Kerry Timber Company for said property. That said A. S. Kerry and Kerry Timber Company submitted to the defendant on November 8th, 1920, an offer to purchase said premises for the sum of \$821,465.00. And on the 5th day of December, 1920, this defendant through

its authorized agents and officers accepted said offer of purchase, and in accordance with said offer and acceptance said purchasers were ready, willing and able to consummate said purchase upon the terms made to and accepted by this defendant.

VI.

That in accordance with said contract and agreement of hiring between plaintiff and defendant, and because of the performance on plaintiff's part of said contract in securing persons, ready, able and willing to purchase said premises, this defendant became, and is indebted to the defendant in the sum of \$41,073.25 as compensation for said service.

VII.

That this plaintiff has demanded of the defendant, its officers and agents payment of the compensation due him, but the same has been refused. [5]

WHEREFORE, plaintiff prays for a judgment against the defendant for the sum of \$41,073.25, together with interest thereon at the rate of six per cent per annum from December 5th, 1920, and for his costs and disbursements herein.

SENN, EKWALL & RECKEN,

Attorneys for Plaintiff.

State of Oregon,

County of Multnomah,—ss.

I, Paul C. Bates being first duly sworn, depose and say that I am the plaintiff in the above-entitled action; and that the foregoing complaint is true as I verily believe.

PAUL C. BATES.

Subscribed and sworn to before me this 24th day of January, 1922.

[Notarial Seal]

F. S. SENN,

Notary Public for the State of Oregon.

My Commission expires July 9, 1924.

Filed January 27, 1922. G. H. Marsh, Clerk. [6]

AND AFTERWARDS, to wit, on the 15th day of July, 1922, there was duly filed in said Court, a motion for leave to amend complaint, in words and figures as follows, to wit: [7]

In the District Court of the United States for the District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER COMPANY, a Utah Corporation,

Defendant.

Motion for Leave to Amend Complaint.

Comes now the plaintiff and presents to this Court his amended complaint, and prays for an order for leave to file the amended complaint in the above-entitled matter.

WILBUR, BECKETT & HOWELL,
F. S. SENN,

Attorneys for Plaintiff.

State of Oregon,
County of Multnomah,—ss.

I, F. S. Senn, one of the attorneys for plaintiff, hereby certify that on this 15th day of July, 1922, I did leave at the office of W. A. Munly, 1124 Board of Trade Building, Portland, Oregon, a true, correct and certified copy of the above notice and motion, and also a true, correct and certified copy of the amended complaint, and the whole thereof. That I left said motion and amended complaint upon the desk of said W. A. Munly, said Munly not being in his office at 11:30 A. M. of the above date.

F. S. SENN.

Subscribed and sworn to before me this 15th day of July, 1922.

[Notarial Seal] LOUIS A. RECKEN,
Notary Public for Oregon.

My Commission expires Oct. 24, 1924.

Filed July 15, 1922. G. H. Marsh, Clerk. [8]

AND AFTERWARDS, to wit on Friday, the 21st day of July, 1922, the same being the 16th judicial day of the regular July term of said Court, present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [9]

In the District Court of the United States for the
District of Oregon.

No. L—8889.

July 21, 1922.

PAUL C. BATES

vs.

OREGON-AMERICAN LUMBER COMPANY.

**Minutes of Court—July 21, 1922—Order Allowing
Plaintiff to Amend Complaint.**

Now, at this day, comes the plaintiff by Mr. Frank S. Senn and Mr. Ralph W. Wilbur, of counsel, and the defendant above named by Mr. William A. Munly, of counsel, whereupon this cause comes on to be heard upon the motion of the plaintiff for leave to file an amended complaint herein, and the Court having heard the arguments of counsel and being now fully advised in the premises,

IT IS ORDERED AND ADJUDGED that said motion be and the same is hereby allowed. Whereupon said defendant excepts to the granting of the said order, which exception is allowed by the Court.

And IT IS FURTHER ORDERED that said defendant be it is hereby allowed thirty days from this date within which to plead to said amended complaint. Whereupon, on motion of plaintiff,

IT IS FURTHER ORDERED that the date heretofore set for the trial of this cause be and the same is hereby cancelled. [10]

AND AFTERWARDS, to wit, on the 17th day of August, 1922, there was duly filed in said Court, a motion to strike out amended complaint, in words and figures as follows, to wit: [11]

In the District Court of the United States for the
District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Motion to Strike Amended Complaint.

Comes now the defendant, The Oregon-American Lumber Company, by its undersigned attorneys, and moves the Court for an order to strike out the amended complaint of the plaintiff filed herein, on the ground and for the reason that said amended complaint contains fifteen different and separate alleged causes of actions which are not pleaded separately but pleaded as one alleged cause of action.

That said alleged fifteen causes of actions may be found in said amended complaint as follows:

(1) The alleged cause of action contained in Paragraph V of said amended complaint concerning alleged services of the plaintiff in connection with the St. Helens Timber Company and C. R. McCormick & Company.

(2) The alleged cause of action contained in Paragraph VI of said amended complaint concerning alleged services of the plaintiff in connection with Coleman H. Wheeler, his associates and affiliated companies.

(3) The alleged cause of action contained in Paragraph VII of said amended complaint concerning alleged services of the plaintiff in connection with the Portland and Southwestern Railroad Company.

(4) The alleged cause of action contained in Paragraph VIII of said amended complaint concerning alleged services of the plaintiff in connection with Mitsui & Company and Coleman H. Wheeler, [12] his associates and affiliated companies.

(5) The alleged cause of action contained in Paragraph IX of said amended complaint concerning alleged services of the plaintiff in connection with the United Railroad Company.

(6) The alleged cause of action contained in Paragraph X of said amended complaint concerning alleged services of the plaintiff in connection with Norman R. Smith, F. W. Reimers and E. P. Denkman.

(7) The alleged cause of action contained in Paragraph XI of said amended complaint concerning alleged services of the plaintiff in connection with E. S. Collins.

(8) The alleged cause of action contained in Paragraph XII of said amended complaint concerning alleged services of the plaintiff in connection with the Long-Bell Company.

(9) The alleged cause of action contained in Paragraph XIII of said amended complaint concerning alleged services of the plaintiff in connection with Coleman Wheeler.

(10) The alleged cause of action contained in Paragraph XIV of said amended complaint concerning alleged services of the plaintiff in connection with William Lee Owens.

(11) The alleged cause of action contained in Paragraph XV of said amended complaint concerning alleged services of the plaintiff in connection with Isaac T. Mann.

(12) The alleged cause of action contained in Paragraph XVI of said amended complaint concerning alleged services of the plaintiff in connection with Stanley Dollar.

(13) The alleged cause of action contained in Paragraph XVII of said amended complaint concerning alleged services of the plaintiff in connection with H. E. Noble, E. B. Waterman and Jacob Mortenson.

(14) The alleged cause of action contained in Paragraph [13] XVIII of said amended complaint concerning alleged services of the plaintiff in connection with the Kerry Timber Company.

(15) The alleged cause of action contained in Paragraph XIX of said amended complaint concerning alleged services of the plaintiff in connection with the Central Coal & Coke Company.

DEVINE, HOWELL, STINE & GWILLIAM and
WM. A. MUNLY,
Attorneys for the Defendant, Oregon-American
Lumber Co.

State of Oregon,
County of Multnomah,—ss.

I, W. A. Munly, of attorneys for defendant, do hereby certify that I have prepared and read the foregoing motion to strike out the amended complaint of the plaintiff, and the same is made in good faith and not for the purpose of delay, and said motion in my opinion is well founded in law.

WM. A. MUNLY.

State of Oregon,
County of Multnomah,—ss.

Due service of the within motion is hereby accepted in Multnomah County, Oregon, this —— day of August, 1922, by receiving a copy thereof, duly certified to as such by W. A. Munly, of Attorneys for defendant.

F. S. SENN,
WILBUR, BECKETT & HOWELL,
Attorneys for Plaintiff.

Filed August 17, 1922. G. H. Marsh, Clerk. [14]

AND AFTERWARDS, to wit on Tuesday, the 5th day of September, 1922, the same being the 55th judicial day of the regular July term of said Court; present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [15]

In the District Court of the United States for the District of Oregon.

No. L—8889.

September 5, 1922.

PAUL C. BATES

vs.

OREGON-AMERICAN LUMBER COMPANY.

Minutes of Court—September 5, 1922—Order Denying Motion to Strike Out Amended Complaint.

This cause was heard by the Court on the motion of defendant to strike out the complaint herein, plaintiff appearing by Mr. Frank S. Senn and Mr. Ralph W. Wilbur, of counsel, and defendant by Mr. William A. Munly and Mr. James G. Wilson, of counsel. And the court having heard the arguments of counsel, upon consideration thereof,

IT IS ORDERED that said motion be and the same is hereby, denied,

IT IS FURTHER ORDERED that said defendant be and is hereby allowed ten days from this date to file an answer herein. [16]

AND AFTERWARDS, to wit, on the 11th day of September, 1922, there was duly filed in said Court, a motion for plaintiff to elect in words and figures as follows, to wit: [17]

In the District Court of the United States for the District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Motion for Plaintiff to Elect.

Comes now the defendant, the Oregon-American Lumber Company, by its undersigned attorneys, and moves the Court for an order requiring the plaintiff herein to elect whether plaintiff in his action will rely on a *quantum meruit*, for the reasonable value of the alleged services set forth in Paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX of his amended complaint herein, or whether plaintiff will rely upon an express contract in said action.

DEVINE, HOWELL, STINE & GWILLIAM and
WM. A. MUNLY,

Attorneys for the Defendant, Oregon-American
Lumber Co.

State of Oregon,
County of Multnomah,—ss.

I, W. A. Munly, one of the defendant's attorneys, do hereby certify that I have prepared and read the foregoing motion, and the same is made in good faith and not for the purpose of delay, and said motion is well founded in law.

WM. A. MUNLY.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Motion is hereby accepted in Multnomah County, Oregon, this 11th day of September, 1922, by receiving a copy thereof, duly certified to as such by Wm. A. Munly, of attorneys for defendant.

F. S. SENN,
Of Attorneys for Plaintiff.

Filed Sept. 11, 1922. G. H. Marsh, Clerk. [18]

AND AFTERWARDS, to wit on Monday, the 25th day of September, 1922, the same being the 72d judicial day of the regular July term of said Court, present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [19]

In the District Court of the United States for the
District of Oregon.

No. L—8889.

September 25, 1923.

PAUL C. BATES

vs.

THE OREGON-AMERICAN LUMBER COM-
PANY.

**Minutes of Court—September 25, 1922—Order De-
nying Motion for Plaintiff to Elect.**

Now, at this day, this cause comes on to be heard by the Court on the motion of the defendant for an order requiring the plaintiff to elect to stand upon a *quantum meruit* or upon express contract, plaintiff appearing by Mr. Frank S. Senn, of counsel, and defendant above named by Mr. William A. Munly, of counsel. And the Court having heard the arguments of counsel, upon consideration thereof,

IT IS ORDERED that said motion be and the same is hereby denied. Whereupon said defendant excepts to said ruling of the court, which exception is allowed. And thereupon on motion of said defendant,

IT IS FURTHER ORDERED that it be and is hereby allowed ten days from this date to further plead or answer herein. [20]

AND AFTERWARDS, to wit, on the 3d day of October, 1922, there was duly filed in said Court, a demurrer to amended complaint, in words and figures as follows, to wit: [21]

In the District Court of the United States for the District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant.

Demurrers of the Defendant.

Comes now the above-named defendant, the Oregon-American Lumber Company, by its undersigned attorneys, and demurs to the amended complaint of the plaintiff filed herein on the following grounds, to wit:

First. That the plaintiff has not the legal capacity to sue on the grounds and for the reason that the amended complaint of the plaintiff shows on its face that the plaintiff is a real estate broker and has not alleged in his amended complaint that he had a license to act as such real estate broker, as is required by the laws of the State of Oregon.

Second. That the amended complaint of the plaintiff, does not state facts sufficient to constitute a cause of action.

DEVINE, HOWELL, STINE & GWILLIAM and
WM. A. MUNLY,
Attorneys for the Defendant, Oregon-American
Lumber Company.

State of Oregon,
County of Multnomah,—ss.

I, W. A. Munly, one of the defendant's attorneys, hereby certify that I have prepared and read the foregoing demurrers to the amended complaint of the plaintiff and that the same are made in good faith and not for the purpose of delay, and that such demurrers are well founded in law.

Oct. 3, 1922.

WM. A. MUNLY. [22]

State of Oregon,
County of Multnomah,—ss.

Due service of the within demurrers is hereby accepted in Multnomah County, Oregon, this 3d day of October, 1922, by receiving a copy thereof, duly certified to as such by Wm. A. Munly, one of attorneys for defendant.

F. S. SENN,
Attorney for Plaintiff.

Filed Oct. 3, 1922. G. H. Marsh, Clerk. [23]

AND AFTERWARDS, to wit, on the 18th day of December, 1922, there was duly filed in said Court, an opinion in words and figures as follows, to wit: [24]

In the District Court of the United States for the District of Oregon.

No. L—8889.

December 18, 1922.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Opinion.

SENN & RECKEN for Plaintiff.

WM. A. MUNLY and DEVINE, HOWELL, STINE
& GWILLIAM for Defendant.

WOLVERTON, District Judge.—This is a demurrer to the amended complaint, predicated upon the assumption that plaintiff was a real estate broker at the dates set out therein, and was acting in that capacity while in the employ of defendant and doing the things for which he is seeking to recover compensation, and that he was not licensed as such.

The plaintiff sets forth that defendant, during August, 1917, having purchased a large tract of timber-land, employed him to assist and aid in

developing the property and the timber thereon, and in devising ways and means of securing the best possible returns, and agreed to pay him for his services and to reimburse him for expenses incurred in connection therewith. Some fifteen specifications of services rendered are alleged in the complaint, as to nearly all of which, if not all, reasonable compensation is demanded.

Section 808, Sub. 8, Lord's Oregon Laws, being a clause of the statute of frauds, was amended in 1917 (Sess. Laws 1917, p. 786), providing the manner of note or memorandum that shall be sufficient where an agent or broker is employed to sell or purchase real estate for another. In 1919 (Sess. Laws 1919, p. 238), an act was passed defining a real estate broker, and licensing [25] him to transact business as such. This act was superseded by act of the Legislative Assembly in 1921. Sess. Laws 1921, p. 438.

It will be seen from this series of acts that, while the style of agreement required on the part of real estate brokers was defined by law prior to the time plaintiff alleges he entered into the agreement of employment set forth in the complaint, namely, August, 1917, the acts requiring such persons to be licensed were adopted two and four years subsequent thereto. However, plaintiff was bound, if a real estate broker, to the observance of the statute of frauds as a prerequisite to maintaining his action. Whether the later acts are retroactive in their operation need not be discussed, in view of

the conclusion I have reached touching the purpose and effect of the complaint.

Was plaintiff a real estate broker, in view of the allegations of his complaint?

A review of the allegations of employment and specifications of services performed renders it obvious that plaintiff was not employed to sell or purchase specific tracts of realty designated by the defendant, with fixed commissions or compensation, but to collaborate with defendant in managing its property and assisting in disposing of or purchasing certain holdings. Plaintiff had no authority to buy or sell, except as his employer might direct and approve, and was always subject to his employer's directions in whatever he did in relation to the management, purchase or disposition of any real property in which it might be, or desired to be, concerned. In other words, plaintiff's employment was that of an agent, subject to special instructions and directions, and his services were rendered in pursuance thereof. He cannot, therefore, be classed as a real estate broker, within the purview of the acts of the Legislative Assembly above noted. Nor [26] does agreement for his general employment fall within the restrictions of the statute of frauds. *Sherman v. Clear View Orchard Co.*, 74 Ore. 240; *Western Lumber Co. v. Willis*, 160 Fed. 27; *Springstein v. Lewis*, 259 Fed. 518.

Demurrer overruled.

Filed Dec. 18, 1922. G. H. Marsh, Clerk. [27]

AND AFTERWARDS, to wit, on Monday, the 18th day of December, 1922, the same being the 36th judicial day of the regular November term of said Court, present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [28]

In the District Court of the United States for the District of Oregon.

No. L—8889.

December 18, 1922.

PAUL C. BATES

vs.

OREGON-AMERICAN LUMBER COMPANY.

Minutes of Court—December 18, 1922—Order Overruling Demurrer to Amended Complaint.

This cause was heard by the Court upon the demurrer to the amended complaint herein, plaintiff appearing by Mr. Frank S. Senn, Mr. Ralph W. Wilbur and Mr. E. K. Oppenheimer, of counsel, and the defendant by Mr. William A. Munly, of counsel. And, the Court, having heard the arguments of counsel, and being fully advised in the premises, upon consideration whereof,

IT IS ORDERED that said demurrer to the amended complaint herein be and the same is hereby overruled, to which ruling of the Court de-

fendant is allowed an exception. Whereupon on motion of said defendant,

IT IS FURTHER ORDERED that it be and is hereby allowed fifteen days from this date in which to file its answer herein. [29]

AND AFTERWARDS, to wit, on the 10th day of January, 1923, there was duly filed in said Court, an answer to amended complaint in words and figures as follows, to wit: [30]

In the District Court of the United States for the District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER COMPANY, a Utah Corporation,

Defendant.

Answer to Amended Complaint.

Comes now the defendant and answering the amended complaint of the plaintiff, alleges as follows:

I.

Answering the allegations of Paragraphs I, II and III of said amended complaint, it admits said allegations.

II.

Answering Paragraph IV of said amended complaint, the defendant admits that it was desirous

of developing the timber-lands therein mentioned, securing transportation and marketing the timber thereon, and denies each and every other allegation contained in said paragraph.

III.

Answering Paragraph V of said amended complaint, the defendant admits that at the time mentioned in said paragraph, there was a logging railroad with a terminus at St. Helens, Oregon; that the defendant was desirous of securing an outlet or transportation facilities for certain timber owned by it, but defendant denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations as to the ownership of said road, or that plaintiff went to St. Helens, Oregon, and to San Francisco, California, or to either of said places, and denies each and every other allegation of said paragraph not in this paragraph expressly admitted. [31]

IV.

Answering the allegations of Paragraph VI of said amended complaint, the defendant admits that there was a logging railroad adjacent to a portion of the timber-lands owned by it and that it had no means of transporting the timber on said lands, but denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations concerning the ownership of the logging railroad, and denies each and every other allegation contained in said paragraph not in this paragraph expressly admitted.

V.

Answering Paragraph VII of said amended complaint, the defendant admits that at the time mentioned therein, there was a railroad in Columbia County, Oregon, with a terminus at Scappoose, Oregon, and extending toward some of the timberlands of the defendant, but denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations therein concerning the ownership of said railroad, or as to the truth of the allegations therein that plaintiff interviewed or negotiated with the officers or agents of said railroad, and denies each and every other allegation contained in said paragraph not hereinbefore expressly admitted.

VI.

Answering Paragraph VIII of said amended complaint, the defendant denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations concerning Mitsui & Company, or as to the allegations that plaintiff accompanied representatives of the said Mitsui & Company to Cochran, Oregon, or as to the allegation that plaintiff interviewed Coleman H. Wheeler, and denies each and every other allegation contained in said paragraph not herein expressly admitted. [32]

VII.

Answering Paragraph IX of said amended complaint, the defendant admits that at the time therein mentioned there was a railroad extending from Linnton, Oregon, to Wilkesboro, Oregon, but

denies that it has any knowledge or information sufficient to form a belief as to the allegations that the plaintiff went to Linnton, Oregon, and interviewed or negotiated with officials, agents or representatives of said railroad, or that he inspected said railroad, roadbed or equipment, and denies each and every other allegation of said paragraph not hereinbefore expressly admitted.

VIII.

Answering Paragraph X of said amended complaint, defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations that Norman E. Smith visited Portland, Oregon, to investigate timber lands, or as to the allegations that the plaintiff accompanied said Smith over the timber-lands of the defendant, or negotiated with said Smith or F. W. Reimers or E. P. Denkman, concerning any of said lands, and denies each and every other allegation contained in said paragraph.

IX.

Answering Paragraphs XI, XII and XIII of said amended complaint, the defendant denies each and every allegation therein and in each of said paragraphs contained.

X.

Answering Paragraph XIV of said amended complaint, the defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations that one William Lee Owens visited Portland, or as to the allegation that the plaintiff accompanied said Owens over any timber-lands of

the defendant, and [33] denies each and every other allegation contained in said paragraph.

XI.

The defendant denies each and every allegation of Paragraphs XV, XVI and XVII of said amended complaint.

XII.

Answering Paragraph XVIII of said amended complaint, defendant denies each and every allegation therein contained, and alleges that at no time was there any memorandum or agreement in writing between the plaintiff and defendant signed by this defendant or by any person authorized to sign such memorandum or agreement on its behalf, whereby the said plaintiff was employed or authorized as the agent of the defendant or otherwise to sell or negotiate for the sale of any lands of the said defendant; and also denies that there was ever any memorandum or agreement between the said plaintiff and defendant signed by the defendant or by any person authorized by it to execute any such memorandum or agreement on its behalf, whereby the said plaintiff was employed or authorized by the defendant as agent of the defendant or otherwise to sell or negotiate for the sale of any lands of the defendant, describing such lands so that the same could be identified or expressing any amount or commission or compensation to be paid to said plaintiff, or expressing any consideration for any agreement authorizing the plaintiff to sell or to negotiate the sale of any lands or interest in land or other property of the defendant.

XIII.

Answering Paragraphs XIX, XX and XXI of said amended complaint, the defendant denies each and every allegation of each and all of said paragraphs.

XIV.

Further answering said amended complaint the defendant [34] denies each and every allegation thereof not hereinbefore admitted or denied.

And for a further and separate answer and affirmative defense herein, this defendant alleges:

I.

That at all the times mentioned in the amended complaint of the plaintiff, he was engaged at Portland, Oregon, in the business negotiating and offering to negotiate for others for compensation and profit, both directly and indirectly, as principal, the purchase, sale, exchange, lease and rental of real estate and of interest in real estate as his principal or partial vocation, and that at none of such times had he secured a license from the Insurance Commissioner of the state of Oregon, or any other person in said state as a real estate broker.

And for a second further and separate answer and affirmative defense to said amended complaint, the defendant alleges:

I.

That at no time was there any contract or memorandum of agreement in writing signed by the defendant, or by any person authorized to make any such contract or agreement on its behalf, employing or authorizing the plaintiff to sell or purchase

any real estate or any interest in real estate, as agent for the defendant, for a compensation or commission. That at no time mentioned in said complaint was there any contract or memorandum of agreement in writing signed by the defendant, or by any person authorized to make any such contract or agreement, employing or authorizing the plaintiff as agent or employee of the defendant or otherwise to sell or purchase, or negotiate the sale or purchase of any [35] real estate or any interest in real estate or other property, in which said real estate was described, or in which the amount of commission or compensation to be paid to said plaintiff was expressed, or any memorandum or agreement of any kind signed by the defendant or by any person authorized by it to make any contract or agreement on its behalf, authorizing or employing the plaintiff to sell or negotiate the sale of any lands or other property of the defendant or to purchase or to negotiate the purchase of any lands or other property for the defendant, or to do any of the things which the plaintiff in his said amended complaint alleges that he did under the alleged contract mentioned in said amended complaint.

And for a third further and separate answer and affirmative defense, the defendant further alleges:

I.

That at all times mentioned in said amended complaint, the defendant was a corporation duly organized and incorporated under the laws of the State of Utah and authorized to do business as such, with its principal place of business at Ogden City, Utah,

with a Board of Directors consisting of five persons, and that during all of such times there was in full force and effect in said State of Utah a statutory provision or law providing that in case the Articles of Incorporation of any corporation formed under the laws of said state do not provide for the sale or other disposition of the property of the corporation, then the act of the Board of Directors in the sale or other disposition of the property of the corporation shall not be valid or binding on the corporation until confirmed by a vote of a majority in amount of the stock outstanding at a meeting of the stockholders duly called to consider such action [36] of the board; and further, that at all such times there was in full force and effect in the State of Utah a statutory provision or law which provided that the corporate powers of any and all corporations organized under the laws of the state shall be exercised by the Board of Directors. The defendant further alleges that the Articles of Incorporation of the defendant do not now, and at no time did provide for the sale or disposition of any of the property of the defendant by any of its officers or by its Board of Directors, and that no officer, manager, managing agent or other agent or employee of said defendant had any authority to make on behalf of the defendant the contract or contracts of hiring or employment or any of them set out in the plaintiff's amended complaint, or to make any contract with the plaintiff for the sale or for negotiating the sale of any lands or other property belonging to the defendant, or for the purchase or negotiating for the

purchase of any lands or other property on behalf of defendant, and that no such contract has ever been made or entered into on behalf of the defendant by its Board of Directors or by any person or persons with the knowledge or consent of such Board of Directors or on behalf of the defendant.

And for a further answer and partial affirmative defense to plaintiff's action and as a defense to Paragraph XIX of said amended complaint, the defendant alleges as follows:

I.

That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Utah, doing business in the State of Oregon under and by virtue and in compliance with the laws thereof.

II.

That the defendant corporation was not at any time [37] and is not authorized or empowered by law, its Articles of Incorporation or otherwise, nor were any of the officers or agents on its behalf empowered to make any contract by which the said defendant corporation would be liable for or pay commission or compensation for the sale of the stock of the stockholders of said corporation to any purchaser or purchasers thereof at any time.

III.

That neither during the year 1920, nor at any time was said defendant corporation or any of its officers or agents, authorized or empowered to employ the plaintiff herein to secure purchasers for and dispose of the capital stock of the stockholders

of said corporation to Central Coal & Coke Company, a corporation, of Kansas City, Missouri, or to any other person or corporation, and said defendant corporation and its officers and agents were not empowered to contract with said plaintiff to pay plaintiff a commission or compensation of two and one-half per cent, or any other per cent or sum whatever, upon the sale of any or all of said capital stock of its stockholders, and that said corporation and its officers and agents were without power to make or execute any contract of employment of the plaintiff for the sale of the stock of its stockholders or any of them, as set forth in plaintiff's amended complaint herein, or at all, and any such alleged contract, if made, which defendant denies, is null, void and beyond the powers of the corporation to make.

WHEREFORE, the defendant prays that the plaintiff take nothing by his amended complaint, and that defendant corporation go hence without day and recover of and from the plaintiff its costs and disbursements in its behalf incurred.

DEVINE, HOWELL, STINE & GWILLIAM and WM. A. MUNLY,

Attorneys for the Defendant. [38]

United States of America,
District of Oregon,
County of Multnomah,—ss.

I, James G. Wilson, being first duly sworn, on my oath depose and say that I am the statutory agent appointed for the State of Oregon of the defendant

Oregon-American Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of Utah; that I have read the foregoing answer to amended complaint and that the facts therein stated are true, as I verily believe.

JAMES G. WILSON.

Subscribed and sworn to before me this 9th day of January, 1923.

[Seal]

E. M. MOLTZNER,
Notary Public for Oregon.

My Commission expires —.

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah County, Oregon, this 10th day of January, 1923, by receiving a copy thereof, duly certified to as such by Wm. A. Munly, of attorneys for defendant.

F. S. SENN,
Attorney for Plaintiff.

Filed Jan. 10, 1923. G. H. Marsh, Clerk. [39]

AND AFTERWARDS, to wit, on the 20th day of January, 1923, there was duly filed in said court, a reply in words and figures as follows, to wit: [40]

In the District Court of the United States for the
District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Reply.

Plaintiff replying to defendant's answer to plaintiff's amended complaint admits, denies and alleges as follows:

I.

Denies each and every allegation therein contained and the whole thereof unless herein specifically admitted.

I.

Plaintiff replying to defendant's first further and separate answer and affirmative defense admits, denies and alleges as follows:

I.

Denies each and every allegation therein contained and the whole thereof, except admits that plaintiff had secured no license from the Insurance Commissioner of the State of Oregon or any other person in said state as a real estate broker.

Plaintiff replying to defendant's second further

and separate answer and affirmative defense admits, denies and alleges as follows:

I.

Denies each and every allegation therein contained, and the whole thereof.

Plaintiff replying to defendant's third further and separate answer and affirmative defense admits, denies and alleges as follows: [41]

I.

Plaintiff has not sufficient knowledge or information upon which to form a belief as to the truth or the falsity of the allegations contained in paragraph I thereof and, therefore, denies the same, except admits that at all the times mentioned in plaintiff's amended complaint the defendant was a corporation duly organized and incorporated under the laws of the State of Utah and authorized to do business as such.

Plaintiff replying to defendant's further answer and partial affirmative defense to plaintiff's action, and as a defense to paragraph XIX of said amended complaint, admits, denies and alleges as follows:

I.

Denies each and every allegation therein contained and the whole thereof unless herein specifically admitted.

II.

Admits paragraph I thereof.

III.

Denies paragraphs II and III thereof.

Plaintiff further replying to defendant's answer to plaintiff's amended complaint alleges:

I.

That during all the times referred to in plaintiff's amended complaint the defendant was duly licensed to do business in the State of Oregon, and during all the times mentioned therein was, and now is, engaged in doing business in the State of Oregon, and maintained an office, among other places in the City of Portland, Oregon.

II.

That said office was maintained and in charge of the [42] president of the defendant corporation, its general manager, and heavy stockholders and directors of said corporation, and all the matters and things set forth in plaintiff's amended complaint were known to said officers and agents of the defendant company at Portland, Oregon, and said matters and things were brought to the attention and knowledge of the directors and stockholders of said corporation located in the State of Utah as well as its general counsel, and said directors and officers and stockholders permitted the officers and agents of said corporation in Portland, Oregon, to hold themselves out to the public and especially the plaintiff as being fully clothed with authority and power to represent said corporation in all matters and things set forth in plaintiff's amended complaint, and said directors and officers and stockholders and general counsel of said defendant company located in the State of Utah knew of all things which plaintiff was performing and had performed

for defendant and sanctioned the same and authorized the Oregon representatives of the defendant company to continue the employment of the said plaintiff and authorized and consented to the employment of said Bates, and therefore, said defendant should be estopped from setting forth any lack of authority on the part of the representatives at Portland, Oregon. That said representatives at Portland and said officers, agents, directors and stockholders of said defendant company made material representations of fact to this plaintiff and had actual knowledge thereof, well knowing that plaintiff relied on said representations and that if the agents lacked authority to act for said defendant, plaintiff was ignorant of such lack of authority, and it was intended by the defendant and its officers, agents, directors and stockholders that plaintiff should act on said representations of the Oregon representatives of said defendant corporation, and said plaintiff did act on the same and to his prejudice, as set forth in plaintiff's amended complaint. [43]

WHEREFORE, plaintiff having fully replied to defendant's answer to plaintiff's amended complaint, reiterates the prayer of his complaint.

SENN & RECKEN,

WILBUR, BECKETT & HOWELL,

Attorneys for Plaintiff.

United States of America,
District of Oregon,
State of Oregon,
County of Multnomah,—ss.

I, Paul C. Bates, being first duly sworn, say:
That I am the plaintiff in the above-entitled suit;
that I have read the foregoing reply and know the
contents thereof, and that the same is true of my
own knowledge, except as to matters therein stated
upon information and belief, and as to such mat-
ters I believe the same to be true.

PAUL C. BATES.

Subscribed and sworn to before me this 18th
day of Jan. 1923.

[Seal]

E. K. OPPENHEIMER,
Notary Public for Oregon.

My Commission expires 9/12/23.

United States of America,
District of Oregon,—ss.

Due and timely service of the within reply and the
receipt of a duly certified copy thereof, all at the
city of Portland in the District of Oregon, is
hereby admitted.

WM. A. MUNLY,
Attorney for Defendant.

Filed Jan. 20, 1923. G. H. Marsh, Clerk. [44]

AND AFTERWARDS, to wit, on the 21st day of March, 1923, there was duly filed in said court, a motion for leave to amend amended complaint, in words and figures as follows, to wit:
[45]

In the District Court of the United States for the
District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Motion for Leave to Amend Amended Complaint.

Comes now the plaintiff and moves this Court for an order giving and granting to the plaintiff the right to amend Paragraph XVIII of plaintiff's amended complaint, to read as follows, to wit:

“That this defendant was desirous of selling a portion of its said timber-land in and about Rock Creek, Columbia County, Oregon, and plaintiff, under his general contract of hiring, was requested to and did interview the agents, officers and representatives of the Kerry Timber Company, for the purpose of selling and disposing of, to the said Kerry Timber Company, a portion of said timber holdings approximating 2400 acres of the said timber-land of this defendant. That the agents and officers of the Kerry Timber Company made offers

to the said defendant and to this plaintiff for the purchase of said timber-land of approximately 2400 acres, and under said general contract of hiring it was agreed between the plaintiff and the defendant that this said plaintiff should be paid a reasonable sum for his services in endeavoring to make said sale, the same to include all expenses to which said plaintiff might be put to regarding the same; and it was further agreed between the said plaintiff and the defendant that if the said plaintiff was able to complete the said sale to the said Kerry Timber Company, and was able to procure as a purchaser the said Kerry Timber Company, who would be ready, able and willing [46] to consummate said sale upon terms agreed upon, that there would be paid to the said plaintiff by the said defendant, as a reasonable compensation for his services, all sums received for said timber land in excess of \$3.00 per thousand. That it was estimated that the said 2400 acres to be sold to the Kerry Timber Company had thereon about 260,783,000 feet of timber and that said timber was to be sold to the said Kerry Timber Company for the sum of \$3.15 per thousand; and this said plaintiff and the said defendant did offer the said timber-land to the said Kerry Timber Company for the sum of \$3.15 per thousand. That at the time said offer was made the said timber-land was under mortgage and it was agreed by the plaintiff and this defendant, in the proposition to the said Kerry Timber Company, that the said 2400 acres could be segregated from the rest of the timber-land owned by the defendant, as contained

in said mortgage, and that the rate of interest would be reduced to the said Kerry Timber Company for the balance of the mortgage term, to $4\frac{1}{2}\%$, and that the Kerry Timber Company could pay to the said defendant the sum of \$250,000.00 in cash and give a mortgage to the mortgagee for the balance of the purchase price, to run at the rate of $4\frac{1}{2}\%$, which proposition was made by the said plaintiff and defendant to the said Kerry Timber Company and its officers; and the officers of the said Kerry Timber Company were favorable to said sale, but that the said defendant, before the said deal was completed, refused to abide by the agreement or proposition made by this plaintiff and defendant to the Kerry Timber Company, and insisted that the said Kerry Timber Company must pay 6% upon said mortgage on deferred payments, and that as a result the said sale between the defendant and the Kerry Timber Company for said 2400 acres was not consummated. That as a result of the services of this plaintiff, as hereinabove alleged, and under the contract of general hiring from the said defendant in the attempted disposal of said 2400 acres to the Kerry Timber Company, the said defendant became indebted to this plaintiff for [47] the reasonable and agreed value of the plaintiff's services in the matter of the negotiations with the Kerry Timber Company, in the sum of \$39,117.45."

WILBUR, BECKETT & HOWELL,

F. S. SENN,

Attorneys for Plaintiff.

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within motion is hereby accepted in Multnomah County, Oregon, this 21st day of March, 1923.

WM. A. MUNLY,

One of the Attorneys for Defendant.

Filed March 21, 1923. G. H. Marsh, Clerk. [48]

AND AFTERWARDS, to wit, on Monday, the 26th day of March, 1923, the same being the 19th judicial day of the regular March term of said court, present the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [49]

In the District Court of the United States for the District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant.

Minutes of Court—March 26, 1923—Order Allowing Motion.

This matter coming on upon the motion of the plaintiff by his attorneys, Senn & Recken and Wilbur, Beckett & Howell, for leave to file by the plaintiff a second amended complaint, and said motion being opposed by the defendant appearing by its attorney, William A. Munly, the Court, after duly considering the matter, allows said motion subject to the orders and conditions hereinafter set forth.

IT IS THEREFORE ORDERED that the plaintiff be, and he is hereby allowed to file his second amended complaint herein, subject to the following conditions and orders:

1. That the defendant be, and it is hereby allowed an exception to the order permitting the plaintiff to file said second amended complaint.

2. It is further ORDERED that the answer heretofore filed by said defendant to the first amended complaint be and the same is hereby permitted to stand as a full answer to the plaintiff's second amended complaint, it being understood that in all particulars, except Paragraph XVIII, plaintiff's second amended complaint corresponds to plaintiff's first amended complaint; and

3. IT IS ORDERED that each and every allegation of said Paragraph XVIII of said second amended complaint is denied by said defendant, and said defendant further alleges as part of said answer to said Paragraph XVIII of said second

amended complaint, same as in the answer to the first amended complaint, as follows: [50]

“Alleges that at no time was there any memorandum or agreement in writing between the plaintiff and defendant signed by this defendant or by any person authorized to sign such memorandum or agreement on its behalf, whereby the said plaintiff was employed or authorized as the agent of the defendant or otherwise to sell or negotiate for the sale of any lands of the said defendant; and also denies that there was ever any memorandum or agreement between the said plaintiff and defendant signed by the defendant or by any person authorized by it to execute any such memorandum or agreement on its behalf, whereby the said plaintiff was employed or authorized by the defendant as agent of the defendant or otherwise to sell or negotiate for the sale of any lands of the defendant, describing such lands so that the same could be identified, or expressing any amount or commission or compensation to be paid to said plaintiff, or expressing any consideration for any agreement authorizing the plaintiff to sell or to negotiate the sale of any lands or interest in land or other property of the defendant.”

(4) IT IS FURTHER ORDERED that the reply of the plaintiff to the answer of the defendant herein to the first amended complaint may stand, and be considered to be the reply to the answer of the defendant to the second amended complaint.

(5) IT IS FURTHER ORDERED that all the motions, demurrers and pleadings heretofore filed to the first amended complaint by the defendant are hereby considered as filed against the second amended complaint, and that the orders and decisions of the Court heretofore made on said motions, demurrers and pleadings of the defendant as to the amended complaint of the plaintiff are hereby considered the orders and decisions on said motions, demurrers and pleadings as to the second amended complaint.

(6) IT IS FURTHER ORDERED that by allowing the filing of said second amended complaint by said plaintiff, the said defendant does not waive any of its rights, objections or exceptions to the orders and decisions made by this Court to any of the motions, demurrers or pleadings which have been made and filed by the defendant, and that said orders and decisions of this Court stand and are considered as the orders and decisions of this Court on said [51] motions, demurrers and pleadings considered and agreed as made and filed by the defendant to the plaintiff's second amended complaint.

(7) IT IS FURTHER ORDERED that all the rights that have accrued and may now accrue to said defendant as to the filing of said motions, demurrers and pleadings and against the orders and decisions thereon by this Court, are hereby protected and preserved for the use and benefit of said defendant, whether before this Court or before any court on writ of error from this Court.

(8) IT IS FURTHER ORDERED that by filing said second amended complaint by said plaintiff and his acceptance of the order of the Court in permitting and allowing said second amended complaint to be filed, the plaintiff has agreed to all of the orders and conditions herein, and has waived and does waive any right to objection or exception to the same.

Given in open court this 26th day of March, 1923.

CHAS. E. WOLVERTON,

Judge.

State of Oregon,

County of Multnomah,—ss.

Due service of the within order is hereby accepted in Multnomah County, Oregon, this — day of March, 1923, by receiving a copy thereof, duly certified to as such by

WM. A. MUNLY,

Of Attorneys for Defendant.

Filed March 26, 1923. G. H. Marsh, Clerk. [52]

AND AFTERWARDS, to wit, on the 26th day of March, 1923, there was duly filed in said court, a second amended complaint in words and figures as follows, to wit: [53]

In the District Court of the United States for the
District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

THE OREGON-AMERICAN LUMBER CO., a
Utah Corporation,

Defendant.

Second Amended Complaint.

Comes now the plaintiff and by leave of Court first had and obtained files this, his second amended complaint, and for his cause of action alleges:

I.

That during all the times herein mentioned this plaintiff was and is now an inhabitant, citizen and resident of the State of Oregon, and domiciled in the city of Portland, Multnomah County, Oregon.

II.

That during all the times herein mentioned this defendant was and is now a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and during all the times herein mentioned was and is now domiciled in the State of Utah, but duly licensed to do business in the State of Oregon, and during all the times herein mentioned was and is now engaged in doing business in the State of Oregon.

III.

That on, to wit, July 1, 1917, this defendant cor-

poration became the owner by purchase of a large tract of timber-land in Columbia, Clatsop and Tillamook Counties, Oregon, comprising 27,331.31 acres, for which this defendant paid the sum of \$3,650,000.00. That at the time of said purchase said property was undeveloped, with no transportation facilities whatsoever and was and is valuable [54] chiefly for its standing timber.

IV.

That this plaintiff was familiar with said timber tract, knew its condition, the contour of the country and the possibilities of development. That this defendant was desirous of developing said tract of timber, securing transportation facilities and marketing the timber thereon; and knowing plaintiff's familiarity with said property, and well knowing that plaintiff was better qualified to direct and assist in the development and marketing of said tract of land and the timber thereon than any other person, did, immediately after said purchase and during August, 1917, hire and employ this defendant to assist and aid in developing and marketing said property, and did, at said time, contract and agree with plaintiff to employ this plaintiff to look after said property, to assist in marketing the timber thereon, in devising ways and means for securing the best possible returns from said property; and this defendant contracted and agreed to pay plaintiff for his services and reimburse him for his expenses in carrying out and performing the services herein agreed upon. That in accordance with said contract of hiring this plaintiff did,

immediately thereafter, enter upon the discharge of his work and employment, and at all times thereafter this plaintiff held himself in readiness and his services were at the disposal of defendant.

V.

That the St. Helens Timber Company and C. R. McCormick & Company, duly organized corporations, were the owners of a certain logging railroad, together with logging equipment, rights of way and other facilities for handling logs and timber. That said logging railroad has its terminus at St. Helens, Oregon, and from which place it is constructed up Milton Creek in Columbia County, Oregon, toward and in the direction of the defendant's heretofore mentioned [55] timber-land. That this defendant was desirous of securing an outlet or transportation facilities for said timber, and in accordance with said desire and in accordance with the aforesaid contract of employment, this defendant and its agents and officers did, on August 6, 1917, direct, instruct and request this plaintiff to negotiate with the officers and agents of said St. Helens Timber Company and said C. R. McCormick & Company, for the purpose of securing transportation facilities over said logging railroad, and also ordered and directed plaintiff to negotiate with the officers, agents and representatives of said St. Helens Timber Company and the said C. R. McCormick & Company, for the purpose of securing an interest in said logging railroad equipment, roadbed, and rights of way. That in accordance with the orders and instructions of this defendant and under

the aforesaid contract of hiring, this plaintiff, on August 6, 1917, went to St. Helens, Oregon, went over said properties at length and thereafter on, to wit, August 7, 1917, went to San Francisco, California, where this plaintiff interviewed the officers, agents and representatives of the said St. Helens Timber Company and the said C. R. McCormick & Company, the aforementioned corporation, and negotiated with said officials and representatives for the purpose of securing transportation facilities, railroad equipment, rights of way and terminal facilities for this defendant. That as a result of said negotiations this plaintiff secured from said St. Helens Timber Company and said C. R. McCormick & Company, the corporations aforesaid, an option in favor of defendant, its officers, agents and representatives, for the purchase of said transportation facilities, including logging railroad, equipment, roadbed, rights of way and terminal facilities in St. Helens, Oregon, for the sum of \$300,000.00, which option was in effect for a period of six [56] months. That this plaintiff was engaged for a period of fifteen days in negotiating for said option and in investigating said properties, and his services in said matter were and are reasonably worth the sum of \$1,125.00. That this plaintiff was required to expend various expenses in carrying on said negotiations and investigating said properties, to wit; automobile hire to St. Helens and return, railroad fare to San Francisco and return, hotel bills while in San Francisco, all in the total sum of \$118.60. That by reason of the plain-

tiff's services rendered to defendant in the matter of the negotiations with said St. Helens Timber Company and said C. R. McCormick & Company, all at the request of this defendant, and by reason of expenses and disbursements incurred by this plaintiff on behalf of the defendant during said negotiations, this defendant became, was and is now indebted to plaintiff by virtue of said negotiations with said St. Helens Timber Company and said C. R. McCormick & Company, in the sum of \$1,243.60.

VI.

That Coleman H. Wheeler, his associates and affiliated companies, during the years 1917, 1918, 1919, 1920 and 1921, were the owners of a logging railroad, logging equipment, rights of way and other transportation facilities at and near Cochran, Oregon. That the said logging railroad of the said Coleman H. Wheeler, his associates and affiliated companies, was adjacent and in close proximity to, to wit, 6300 acres of timber-land belonging to this defendant company, all of said 6300 acres being a part and parcel of the aforesaid 27,331.31 acres purchased by defendant on July 1, 1917. That this defendant company had no means or transportation facilities whereby the timber located upon said 6300 acres could be logged and transported to market. That this defendant, its officers and agents, were desirous of securing transportation [57] facilities over the logging railroad and equipment of said Coleman H. Wheeler, his associates and affiliated companies, and in De-

cember, 1917, this defendant, its officers and agents, ordered, directed and instructed plaintiff, under the aforesaid general contract of hiring, to interview and negotiate with the said Coleman H. Wheeler for the purpose of securing transportation facilities for the logs and products of the defendant company over the railroad and equipment of said Coleman H. Wheeler, his associates and affiliated companies. That in accordance with said orders and directions, plaintiff did, at various times, from December, 1917, to and including October, 1918, negotiate with said Coleman H. Wheeler for the purpose of securing transportation facilities over said logging railroad. That plaintiff, in accordance with the aforesaid contract of hiring, negotiated with Chairman of Fir Production Dept. of the U. S. War Industry Board and went to Cochran, Oregon, and inspected the logging railroad of said Coleman H. Wheeler, and the equipment thereof and interviewed said Coleman H. Wheeler, also interviewed and negotiated with the said Coleman H. Wheeler on numerous occasions at the office of said Coleman H. Wheeler in Portland, Oregon, and negotiated with said aforesaid Chairman of Fir Production Department. That this plaintiff rendered services for a period of thirty-two days in negotiating with and in interviewing said Chairman, Coleman H. Wheeler and in inspecting the logging railroad equipment and transportation facilities and in examining said 6300 acres. That this plaintiff's services for said thirty-two days were and are reasonably worth the sum

of \$2400.00. That this plaintiff, in accordance with said contract of hiring, was compelled to and did expend certain monies in his negotiations with said Coleman H. Wheeler as aforesaid, consisting of railroad fare from Portland to Cochran and return, and hotel bills, all in the sum of \$19.72. That by reason [58] of the services rendered by this plaintiff to this defendant and expenses in the matter of the negotiations with the said Coleman H. Wheeler and others, this defendant became, was and is now indebted to the plaintiff in the sum of \$2,419.72.

VII.

That the Portland and Southwestern Railroad Company is the owner of a railroad in Columbia County, Oregon, the terminus of which is at Scappoose, Oregon, and said railroad extends from Scappoose, Oregon, toward the timber-land of this defendant. That this defendant was desirous of securing transportation facilities over the railroad of said Portland & Southwestern Railroad Company and was desirous of securing an interest in or a lease of said railroad. That during, to wit, September of 1917, this defendant, under the aforesaid contract of hiring, ordered, directed and requested plaintiff to interview and negotiate with the owners, officials and agents of said Portland & Southwestern Railroad Company, the corporation aforesaid, for the purpose of securing a lease of or transportation facilities upon the logging railroad of said Portland & Southwestern Railroad Company. That it was desired by this defendant to

secure an interest in or lease of or transportation facilities over said railroad as the same then existed, and to further secure an agreement from the said Portland & Southwestern Railroad Company for an extension of said railroad to the town of Vernonia, Oregon. That in accordance with said contract of employment and under defendant's instructions and at its request, this plaintiff interviewed and negotiated with the officers and agents of said Portland & Southwestern Railroad Company, which negotiations resulted in securing for this defendant and from said Portland & Southwestern Railroad Company, a proposal for the sale of a one-half interest in said railroad, equipment [59] thereof and rights of way, based upon a total valuation of \$280,000.00, of which amount this defendant was required to pay the sum of \$140,000.00. It was further agreed between the Portland & Southwestern Railroad Company and the defendant that it, the Portland & Southwestern Railroad Company, would extend said railroad to Vernonia, Oregon, which point is in proximity to the timber of this defendant, and that the cost of said extension should be divided equally between the defendant company and the said Portland & Southwestern Railroad Company. That this plaintiff, in negotiating with and interviewing said officers and agents of the Portland & Southwestern Railroad Company, rendered services to the defendant under the aforesaid contract of hiring, for a period of twenty days and that said services were and are reasonably worth the sum of \$1,500.00. That this

plaintiff, in rendering said services, went over the property and railroad of the said Portland & Southwestern Railroad Company, making a trip to Scappoose, Oregon, and that the expenses incurred by plaintiff for automobile hire to Scappoose and return to Portland, and for telegrams, meals and hotel accommodations, were and are the sum of \$17.50. That by reason of the services rendered to this defendant in negotiations with the said Portland & Southwestern Railroad Company, and the expenses incurred by plaintiff in said negotiations, this defendant became, was and is now indebted to plaintiff in the sum of \$1,517.50.

VIII.

That during the month of May, 1918, Mitsui & Company, of Tokio, Japan, were contemplating the purchase of timber-land and lumbering operations in the State of Oregon, and particularly the saw-mill, logging railroad and lumbering operations of Coleman H. [60] Wheeler, his associates and affiliated companies. That the logging operations of the said Coleman H. Wheeler adjoined a portion of the timber-land of this defendant and approximately 6300 acres of the timber-land of this defendant was adjacent to and contiguous with the logging operations of the said Coleman H. Wheeler, and the timber upon said 6300 acres of this defendant was more accessible to the operations of the said Coleman H. Wheeler than to that of any other possible means of operation. That this defendant, knowing of said proposed negotiations of said Mitsui & Company with the said Coleman

H. Wheeler, desired this plaintiff to interview the representatives of the said Mitsui & Company, for the purpose of disposing to said Mitsui & Company of said 6300 acres of timber-land at the same time that the said Coleman H. Wheeler disposed of his operations to said Mitsui & Company; and with such purpose in view, this defendant company did, in May of 1918, order, request and direct this plaintiff to interview said Mitsui & Company, also said Coleman H. Wheeler, for the purpose of disposing of said 6300 acres of land. That in accordance with said orders and directions under the aforesaid contract of hiring, this plaintiff did accompany the representatives of said Mitsui & Company, over the property of said Coleman H. Wheeler and the property of this defendant. That this plaintiff accompanied said representatives of said Mitsui & Company to Cochran, Oregon, interviewed said Coleman H. Wheeler and journeyed over the property of the said Coleman H. Wheeler and of this defendant. That this plaintiff negotiated with said Mitsui & Company, under said contract and agreement with defendant for a period of over two years and rendered services to this defendant in interviewing the representatives of said Mitsui & Company and negotiating with them for a [61] period of thirty days. That this plaintiff's services were and are reasonably worth the sum of \$2,250.00 by reason of his negotiations and services rendered in the matter of Mitsui & Company. That this plaintiff, in order to properly show the property of this defendant to the said Mitsui & Company, incurred

expenses in the hire of an automobile in the sum of \$250.00, railroad fare of \$4.86, maps \$49.50, board and hotel bills \$60.00, or total expenses of \$364.36. That by reason of this plaintiff's services heretofore rendered in the matter of the Mitsui & Company negotiations and expenses incurred and paid by plaintiff therein, this defendant became, was and is now indebted to plaintiff in the sum of \$2,464.00.

IX.

That the United Railroad Company was a railroad from Linnton, Oregon, to Wilksboro, Oregon. That this defendant company was desirous of leasing said railroad and then extending the same into the timber-lands of this defendant. That in order to secure a lease of said United Railroad this defendant did, during the month of September, 1918, order, direct and request this plaintiff to interview and negotiate with the representatives and officials of the United Railroad Company, and in accordance with said orders and directions, and under said contract of hiring, this plaintiff did interview the agents and representatives of said United Railroad and did go to Linnton, Oregon, inspected and looked over said railroad, roadbed and equipment. That the said negotiations with the agents of the said United Railroad continued from September, 1918, until February, 1919. That as a result of said services and negotiations this defendant did lease from the said United Railroad said railroad, rights of way, equipment and terminal facilities, for a period of ninety-nine years at an annual rental [62] of \$45,000.00. That this plaintiff,

by reason of said negotiations, rendered services to this defendant for a period of thirty days. That the said services were and are reasonably worth the sum of \$2,250.00. That this plaintiff, in carrying on said negotiations, made a trip to Linnton over the property of the said United Railroad, and expended for automobile hire, hotels, meals and telegrams, the sum of \$75.00. That by reason of said negotiations with the said United Railroad and by reason of the services rendered therein by the plaintiff to the defendant, and expenses incurred and paid by plaintiff, this defendant became, was and is now indebted to plaintiff in the sum of \$2,325.00.

X.

That during the month of August, 1918, Norman R. Smith, of Hammond, Louisiana, for himself and his associates, F. W. Reimers, of Hammond, Louisiana, and E. P. Denkman, of Chicago, Illinois, came to Portland for the purpose of investigating timber-lands. This defendant, its officers and agents, under their contract of hiring with plaintiff, requested and directed plaintiff to negotiate with said Norman R. Smith, F. W. Reimers and E. P. Denkman for the purpose of interesting said Norman R. Smith, F. W. Reimers and E. P. Denkman in the timber-land of this defendant or in the capital stock of this defendant. That in accordance with the orders and directions of defendant, plaintiff accompanied said Norman R. Smith over the timber-land of this defendant and negotiated with said Norman R. Smith, F. W. Reimers and E. P. Denk-

man over a period of two and one-half years, commencing with August, 1918, for the sale of an interest in or a portion of said property, and finally for the sale of all of said property. That this plaintiff rendered services for a period of twenty-five days in negotiating with and presenting to said Norman R. Smith said property, and that said services were [63] and are reasonably worth the sum of \$1,875.00. That this plaintiff did, in order to properly show said property to said Norman R. Smith, hire an automobile to go over said property and did hire services of a timber cruiser in order to locate certain corners of said property and certain lines; and this plaintiff expended in automobile hire, as a necessary expense, the sum of \$75.00, and for the services of a timber-cruiser \$60.00; and by reason of the services of this plaintiff in the matter of the negotiations with the said Norman R. Smith, E. P. Denkman and F. W. Reimers, and expenses incurred therein, this defendant became, was and is indebted to plaintiff in the sum of \$2,010.00.

XI.

That this defendant, during the month of March, 1919, ordered, requested and directed plaintiff to interview and negotiate with one E. S. Collins for the purpose of selling to the said E. S. Collins a portion of the stock of the defendant company, or a portion of the timber-land of this defendant. That in accordance with said request, orders and directions, and under said contract of hiring heretofore mentioned, this plaintiff interviewed the said E. S. Collins and negotiated with the said E. S.

Collins for a period covering eighteen months, commencing with March of 1919. That this plaintiff, in order to properly negotiate with the said E. S. Collins and properly show said property, accompanied said E. S. Collins, together with a timber-cruiser, camping outfit and other equipment, over said property, journeyed from one end of the same to the other; and this plaintiff rendered services to the defendant in the matter of the negotiations with said E. S. Collins for a period of thirty days. That this plaintiff, in order to properly show said property to said E. S. Collins and to properly negotiate with him for the same, was required to hire a cruiser, one George Bowers, and was required to and did pay said George Bowers the sum of \$220.00 for services in said negotiations with said E. S. Collins, and was compelled to and did pay to one Read \$60.00 for use of horses, camping outfit and other services in making said trip and did expend for railroad fare the sum [64] of \$14.58, and for one map \$30.00. That by reason of said plaintiff's services rendered for the defendant in the matter of the negotiations with said E. S. Collins, and the expenses of this plaintiff incurred and expended therein, this defendant became, was and is now indebted to plaintiff, by reason of said matters, in the sum of \$2,574.58.

XII.

That during the month of March, 1919, plaintiff, under his contract of hiring with defendant and at defendant's request, commenced negotiating with the Long-Bell Company and its officials, for the

purpose of disposing or selling a portion of the timber-land of this defendant or a portion of its capital stock. That in accordance with said contract of hiring and at the request of defendant and its officials, this plaintiff did, for a period of four months beginning with March, 1919, interview and negotiate with the officials of the Long-Bell Lumber Company. That this plaintiff went to San Francisco to interview one E. H. Cox, agent for and representative of the Long-Bell Lumber Company; and at the request of and under the orders and directions of the defendant, plaintiff submitted to said Long-Bell Lumber Company, on June 19, 1919, a proposal for the sale of one-half of the property of the defendant company to the said Long-Bell Lumber Company. That this plaintiff, in said negotiations, rendered services for a period of fifteen days of the reasonable value of \$1,125.00, and expended in expenses during said negotiations, railroad fare to San Francisco, California, in the sum of \$31.60, and hotel bills in the sum of \$20.00. That by reason of the said services of plaintiff to defendant and under said contract of hiring and by reason of the expenditures heretofore mentioned, this defendant became, and was indebted to plaintiff in the sum of \$1,276.60, [65] by reason of plaintiff's negotiations with the said Long-Bell Lumber Company.

XIII.

That during the month of January, 1919, this defendant company, having previously learned that it could not make satisfactory traffic arrange-

ments for the transportation of its logs with Coleman H. Wheeler, ordered and requested this plaintiff to interview said Coleman H. Wheeler for the purpose of selling to said Coleman H. Wheeler approximately 6300 acres of timber-land adjoining and adjacent to the logging operations of said Coleman H. Wheeler. That this plaintiff, in accordance with the request and instructions of the defendant, made two trips to Cochran, Oregon, for the purpose of interviewing Coleman H. Wheeler, seeking to sell to said Coleman H. Wheeler, for this defendant, said 6300 acres of timber-land, and negotiating with said Coleman H. Wheeler during the entire year of 1919 and 1920 for the purpose of selling said 6300 acres to Coleman H. Wheeler. That plaintiff rendered services for a period of fifteen days in negotiating with said Coleman H. Wheeler at Cochran, Oregon, and in the city of Portland, Oregon. That said services were and are of the reasonable value of \$1,125.00, and this plaintiff, in making said trips to Cochran, expended for railroad fare the sum of \$9.72. That by reason of the services aforesaid and by reason of the expenses incurred and expended by plaintiff this defendant became, was and is now indebted to plaintiff in the sum of \$1,134.72.

XIV.

That during the month of September, 1919, one William Lee Owens came to Portland, and this defendant requested plaintiff to accompany said William Lee Owens over the timber-lands of this defendant for the purpose of selling to said Will-

iam Lee Owens a portion of said timber-lands. That this plaintiff did, during September of 1919, accompany said William Lee Owens over the said timber-lands of this defendant and rendered services to this defendant for a [66] period of five days, of the reasonable value of \$375.00. That by reason of the services and auto hire \$50.00, and hotel bill \$50.00, rendered by plaintiff to the defendant in the matter of the negotiations with said William Lee Owens, and expenses, this defendant became, was and is now indebted to this plaintiff in the sum of \$475.00.

XV.

That on May 5, 1919, this plaintiff did, under said contract of hiring, and in accordance with the request, orders and directions of the defendant, make a journey to Washington, New York and Boston, for the purpose of interviewing and negotiating with one Isaac T. Mann, president of the Pocahontas Consolidated Colliers Co., for the purpose of disposing of a portion of the stock of timber-land of this defendant company to the said Isaac T. Mann, and this plaintiff did, under said contract of hiring and at the request, orders and directions of the defendant, render services to this defendant for a period of five days in negotiating with and interviewing said Isaac T. Mann, which services were and are reasonably worth the sum of \$375.00; and this plaintiff did expend for railroad fare and hotel bills the further sum of \$100.00 in negotiating with said Isaac T. Mann. That by reason of said negotiations with said Isaac T. Mann and by reason

of the aforesaid services and expenses this defendant became, was and is now indebted to plaintiff in the sum of \$475.00.

XVI.

That during the month of July, 1920, this defendant requested and directed this plaintiff to interview and negotiate with one Stanley Dollar, of the Stanley Dollar Company, San Francisco, California, for the purpose of selling to said Stanley Dollar from one-fourth to four-tenths of the capital stock of the [67] defendant company. That under said contract of hiring heretofore mentioned and in accordance with said orders and directions from this defendant, this plaintiff went to San Francisco, interviewed said Stanley Dollar and his associates, and plaintiff rendered services for a period of twenty days, of the reasonable value of \$1,500.00, in negotiating with said Stanley Dollar, and expended for railroad fare the further sum of \$63.60, and hotel bills in the further sum of \$30.00; and by reason of said negotiations and said services and expenses heretofore mentioned, with said Stanley Dollar and associates, this defendant became, was and is now indebted to plaintiff in the sum of \$1,593.60.

XVII.

That on September 23, 1919, this plaintiff was requested and directed, under said contract of hiring by this defendant, its officers and agents, to interview Mr. H. E. Noble, of Portland, Oregon, for the purpose of securing the purchase price of 8,000,000 feet of timber adjacent to the tunnel-site

of the defendant company's railroad in Columbia County, Oregon, and in accordance with the orders and directions of this defendant and under said contract of hiring, plaintiff interviewed said H. E. Noble and rendered services for a period of one day. That this defendant did request and direct this plaintiff, under his contract of hiring heretofore mentioned, to interview one E. B. Waterman for the purpose of interesting said E. B. Waterman in the timber-lands of this defendant, and this plaintiff did interview said E. B. Waterman and rendered services in negotiating with said E. B. Waterman for a period of one day; and this plaintiff did further, at the request of defendant and under his contract of hiring, negotiate with one Jacob Mortenson for the purpose of interesting said Jacob Mortenson in the capital [68] stock of the timber-lands of this defendant. That said plaintiff, in negotiating with said H. E. Noble, E. B. Waterman and Jacob Mortenson, rendered services for a period of three days, of the reasonable value of \$225.00; and this defendant, by reason of said negotiations and rendering of said services, became, was and is now indebted to plaintiff in the sum of \$225.00.

XVIII.

That this defendant was desirous of selling a portion of its said timber-land in and about Rock Creek, Columbia County, Oregon, and this plaintiff, under his general contract of hiring, was requested to and did interview the agents, officers and representatives of the Kerry Timber Company, for the

purpose of selling and disposing of, to the said Kerry Timber, a portion of said timber holdings, approximating 2400 acres of the said timberland of this defendant. That the agents and officers of the Kerry Timber Company made offers to the said defendant and to this plaintiff for the purchase of said timberland of approximately 2400 acres, and under said general contract of hiring it was agreed between the plaintiff and the defendant that this said plaintiff should be paid a reasonable sum for his services in endeavoring to make said sale, the same to include all expenses to which said plaintiff might be put to regarding the same; and it was further agreed between the said plaintiff and the defendant that if the said plaintiff was able to complete the said sale to the Kerry Timber Company, and was able to procure as a purchaser the said Kerry Timber Company, who would be ready, able and willing to consummate said sale upon terms agreed upon, that there would be paid to the said plaintiff by the said defendant, as a reasonable compensation for his services, all sums received for said timberland in excess of \$3.00 per thousand. That it was estimated that [69] the said 2400 acres to be sold to the Kerry Timber Company has thereon about 260,783,000 feet of timber and that said timber was to be sold to the said Kerry Timber Company for the sum of \$3.15 per thousand; and this said plaintiff and the said defendant did offer the said timberland to the said Kerry Timber Company for the sum of \$3.15 per thousand. That at the time

said offer was made the said timber-land was under mortgage and it was agreed by the plaintiff and this defendant, in the proposition to the said Kerry Timber Company, that the said 2400 acres could be segregated from the rest of the timber-land owned by the defendant, as contained in said mortgage, and that the rate of interest would be reduced to the said Kerry Timber Company for the balance of the mortgage term, to $4\frac{1}{2}\%$, and that the Kerry Timber Company could pay to the said defendant the sum of \$250,000.00 in cash and give a mortgage to the mortgagee for the balance of the purchase price, to run at the rate of $4\frac{1}{2}\%$, which proposition was made by the said plaintiff and defendant to the said Kerry Timber Company and its officers; and the officers of the said Kerry Timber Company were favorable to said sale, but that the said defendant, before the said deal was completed, refused to abide by the agreement or proposition made by this plaintiff and defendant to the Kerry Timber Company, and insisted that the said Kerry Timber Company must pay 6% upon said mortgage on deferred payments, and that as a result the said sale between the defendant and the Kerry Timber Company for said 2400 acres was not consummated. That as a result of the services of this plaintiff, as hereinabove alleged, and under the contract of general hiring from the said defendant in the attempted disposal of said 2400 acres to the Kerry Timber Company, the said defendant became indebted to this plaintiff for the reasonable and agreed value of the plaintiff's services in the matter

[70] of the negotiations with the Kerry Timber Company, in the sum of \$39,117.45.

XIX.

That during the month of November, 1920, and prior thereto, this defendant, under the aforesaid contract of hiring and at its request, directed plaintiff to sell a portion of its capital stock, or, failing to sell a portion of its capital stock in November of 1920, ordered and directed plaintiff to sell all of the capital stock of this defendant corporation. That under said general contract of hiring and in accordance with the orders and directions of defendant, this plaintiff negotiated with the agents, representatives and officials of the Central Coal & Coke Company, a corporation of Kansas City, Missouri, and delivered to the said agents and representatives of the said Central Coal & Coke Company of Kansas City, Missouri, maps and plats of all the timber-lands of this defendant, whereupon the agents and representatives of the said Central Coal & Coke Company investigated and inspected said timber-lands and negotiated with defendant for the purchase of defendant's capital stock. That the said Central Coal & Coke Company, by reason of the negotiations of the plaintiff with its agents and representatives, and by reason of the acts and efforts of plaintiff, did purchase from this defendant all of the capital stock of the defendant company for the sum of \$7,000,000.00. That this plaintiff's services, in the sale of said capital stock to said Central Coal & Coke Company, were and are reasonably worth two and one-half per cent of the

sale price of said property. That this defendant was advised and informed that plaintiff's services, if said property was sold to the said Central Coal & Coke Company, would be worth, reasonably, two and one-half per cent of the sale price. That this defendant acquiesced in and ratified said statement [71] and consummated the sale of said capital stock to said Central Coal & Coke Company. That this plaintiff's services were and are reasonably worth two and one-half per cent of said sale price, and by reason of the sale of said capital stock to the said Central Coal & Coke Company, and by reason of the services of this plaintiff and said negotiations, this defendant became, was and is now indebted to plaintiff, by reason of the sale of said property to the Central Coal & Coke Company, in the sum of \$175,000.00.

XX.

That all of the services rendered by the plaintiff to this defendant and for the benefit of this defendant were under the general contract of hiring heretofore mentioned, and all of the expenses incurred by and paid by plaintiff in rendering the foregoing services and in the foregoing negotiations were all necessary and reasonable services under said plaintiff's general contract of hiring with this defendant, and all of said expenses were incurred and paid by plaintiff under said general contract of hiring. That all of said services were rendered by this plaintiff to this defendant in accordance with his contract of hiring with defendant.

XXI.

That prior to the commencement of this action this plaintiff demanded of and from defendant, payment for the services aforesaid. That this defendant has refused and declined to pay the same or any part thereof, and that the whole and every part in the amount herein claimed is due and owing from this defendant to this plaintiff.

WHEREFORE, plaintiff prays for a judgment against the defendant for the sum of \$234,002.13, and for his costs and disbursements herein.

F. S. SENN,

WILBUR, BECKETT & HOWELL,

Attorneys for Plaintiff. [72]

State of Oregon,

County of Multnomah,—ss.

I, Paul C. Bates, being first duly sworn, depose and say that I am the plaintiff in the above-entitled action; and that the foregoing second amended complaint is true as I verily believe.

PAUL C. BATES.

Subscribed and sworn to before me this 22d day of March, 1923.

[Notarial Seal]

LOUIS A. RECKEN,

Notary Public for the State of Oregon.

My Commission expires Oct. 24, 1924.

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within second

amended complaint is hereby tendered in Multnomah County, Oregon, this 22d day of March, 1923.

WM. A. MUNLY,

One of the Attorneys for the Defendant.

Filed March 26, 1923. G. H. Marsh, Clerk. [73]

AND AFTERWARDS, to wit, on the 4th day of April, 1923, there was duly filed in said Court, a verdict in words and figures as follows, to wit: [74]

In the District Court of the United States for the District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant.

Verdict.

We, the jury, duly impanelled and sworn in the above-entitled action, by direction of the Court, find for the defendant.

H. N. BURPEE,

Foreman.

Filed Apr. 4, 1923. G. H. Marsh, Clerk. [75]

AND AFTERWARDS, to wit on Wednesday, the 4th day of April, 1923, the same being the 27th judicial day of the regular March term of said Court, present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [76]

In the District Court of the United States for the District of Oregon.

No. L—8889.

April 4, 1923.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant.

Minutes of Court—April 4, 1923—Judgment.

Now, at this day, come the parties hereto by their counsel as of yesterday, whereupon the jury empaneled herein being present and answering to their names, the trial of this cause is resumed. Whereupon, on motion of defendant for a directed verdict in favor of said defendant,

IT IS ORDERED that said motion be, and the same is hereby allowed, and thereupon, without retiring from the jury-box, by direction of the Court said jury return the following verdict, viz.:

“We, the Jury, duly empanelled and sworn in the above-entitled action, by direction of the Court find for the defendant.

H. N. BURPEE,
Foreman.”

which verdict is received by the court and ordered to be filed. Whereupon, on motion of said defendant for judgment upon said verdict,

IT IS ADJUDGED that plaintiff take nothing by this action, that said defendant go hence without day, and that said defendant do have and recover of and from plaintiff its costs and disbursements herein taxed in the sum of \$245.68, and that execution issue therefor. [77]

AND AFTERWARDS, to wit, on the 31st day of May, 1923, there was duly filed in said Court, a petition for writ of error in words and figures as follows, to wit: [78]

In the District Court of the United States for the
District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

Petition for Writ of Error.

Paul C. Bates, plaintiff in the above-entitled action, feeling himself aggrieved by the action of the

Court and the judgment of the above-entitled action, entered on the 4th day of April, 1923, by which it was adjudged that the defendant take judgment against the plaintiff for the sum of \$245.-68/100, costs and disbursements, comes now and petitions the above Court for an order allowing this plaintiff to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States, on that behalf made and provided, and that a transcript of the record and proceedings and all papers upon which the judgment and rulings herein were rendered, duly authenticated as by law provided, may be sent to the United States Circuit Court of Appeal for the Ninth Circuit, and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said writ of error, and your Petitioner will ever pray.

R. W. WILBUR,

F. S. SENN,

Attorneys for Petitioner.

State of Oregon,

County of Multnomah,—ss.

I, Paul C. Bates, being first duly sworn depose and say that I am the petitioner and plaintiff named herein and that the foregoing facts are true as I verily believe.

PAUL C. BATES. [79]

Subscribed and sworn to before me this 31st day of May, 1923.

[Seal]

F. S. SENN,

Notary Public for Oregon.

My Commission expires July 9, 1924.

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within petition is hereby accepted in Multnomah County, Oregon, this 31st day of May, 1923.

WM. A. MUNLY,

One of the Attorneys for Def.

Filed May 31, 1923. G. H. Marsh, Clerk. [80]

AND AFTERWARDS, to wit, on the 31st day of May, 1923, there was duly filed in said Court, an assignment of errors in words and figures as follows, to wit: [81]

In the District Court of the United States for the District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

***Assignment of Errors.**

Comes now the plaintiff above named and in connection with his petition for writ of error in the above-entitled action suggests that there was error

on the part of the District Court of the United States for the District of Oregon, in regard to the matters and things herein set forth, and plaintiff makes this, his

ASSIGNMENT OF ERRORS.

First. That the Court erred in striking out from the record the testimony of Charles T. Early, and the plaintiff herein alleges that said testimony was competent, relevant and material and that error was committed in striking said evidence from the record.

Second. That the Court erred in holding that the plaintiff's offer of proof did not constitute sufficient evidence to permit the case to go to the jury, and therefore the Court erred in rejecting said offer of proof.

Third. That the Court erred in directing the jury to return a verdict for the defendant upon the ground that there was not sufficient evidence authorizing a recovery, because there was no competent evidence sustaining the hiring of the plaintiff by the defendant corporation.

R. W. WILBUR,

F. S. SENN,

Attorneys for Plaintiff.

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within assignment of error [82] is hereby accepted in Multnomah County, Oregon, this 31st day of May, 1923.

WM. A. MUNLY,

One of the Attorneys for Defendant.

Filed May 31, 1923. G. H. Marsh, Clerk. [83]

AND AFTERWARDS, to wit on Thursday, the 31st day of May, 1923, the same being the 72d judicial day of the regular March term of said Court, present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [84]

In the District Court of the United States for the District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

**Minutes of Court—May 31, 1923—Order Allowing
Writ of Error.**

On this 31st day of May, 1923, came the above-named plaintiff by F. S. Senn, his attorney, and filed herein and presented to the Court his petition praying for the allowance of a writ of error, intended to be urged by the plaintiff, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 4th day of April, 1923, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and such other and further proceedings may be had as may appear proper in the premises.

On consideration whereof the Court does hereby allow the said writ of error and that citation issue as by law provided.

It is further ordered that the amount of the supersedeas bond to be given by said plaintiff be and the same is hereby fixed at the sum of Five Hundred Dollars with good and sufficient surety to be approved by this Court which bond now being filed with W. N. Pearson as surety is hereby approved and allowed.

Dated May 31st, 1923.

R. S. BEAN,
Judge.

Filed May 31, 1923. G. H. Marsh, Clerk. [85]

AND AFTERWARDS, to wit, on the 31st day of —, 1923, there was duly filed in said court, a bond on writ of error, in words and figures as follows, to wit: [86]

In the District Court of the United States for the District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Paul C. Bates, as principal and W. E.

Pearson, as surety are held and firmly bound unto the Oregon-American Lumber Company in the sum of Five Hundred Dollars, to be paid to the said Oregon-American Lumber Company, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 31st day of May, 1923.

Whereas, the above-named Paul C. Bates has applied for and obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment rendered in the above-entitled cause by the District Court of the United States for the District of Oregon.

Now therefore, the condition of this obligation is such that if the said Paul C. Bates shall prosecute said write to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

PAUL C. BATES.

W. E. PEARSON.

State of Oregon,
County of Multnomah,—ss.

I, W. E. Pearson, whose name is subscribed as surety [87] to the undertaking, being first duly sworn, for himself, says: I am a resident and house and free holder of the County of Multnomah, State of Oregon, and am worth the sum of One Thousand (\$1000.00) Dollars over and above all my debts and

liabilities, and exclusive of property exempt from execution.

W. E. PEARSON.

Subscribed and sworn to before me this 31st day of May, 1923.

[Seal]

F. S. SENN,

Notary Public for Oregon.

Commission expires July 9, 1924.

State of Oregon,

County of Multnomah,—ss.

Due and legal service of the within undertaking is hereby accepted in Multnomah County, Oregon, this 31st day of May, 1923.

WM. A. MUNLY,

One of the Attorneys for Def.

Filed May 31, 1923. G. H. Marsh, Clerk. [88]

AND AFTERWARDS, to wit on Thursday, the 31st day of May, 1923, the same being the 72d judicial day of the regular March term of said court, Present the Honorable ROBERT S. BEAN, United States District Judge, presiding,—the following proceedings were had in said cause, to wit: [89]

In the District Court of the United States for the
District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

**Minutes of Court—May 31, 1923—Order Certifying
Exhibits.**

Now, at this day, it appearing that plaintiff's exhibits numbered 1 to 8 inclusive introduced in evidence upon the trial of this cause, should be inspected by the Appellate Court upon the appeal herein;

It is ordered that said exhibits numbered 1 to 8 inclusive, be certified up with the record to the United States Circuit Court of Appeals for the Ninth Circuit.

R. S. BEAN,
Judge.

Filed May 31, 1923. G. H. Marsh, Clerk. [90]

AND AFTERWARDS, to wit, on the 23d day of June, 1923, there was duly filed in said court, a bill of exceptions, in words and figures as follows to wit: [91]

In the District Court of the United States for the
District of Oregon.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED heretofore, to wit: On the second day of April, 1923, at Portland, Oregon, in the District Court of the United States, for the District of Oregon, the above-entitled cause came on for trial to be heard before the Honorable Robert S. Bean, Judge of the above-entitled Court, presiding, and a jury duly and regularly impaneled to try the issues herein. The plaintiff appeared in person and by his attorneys Ralph W. Wilbur and F. S. Senn, and the defendant appeared by its attorneys James H. DeVine, A. W. Agee, Wm. A. Munly, Wm. P. Richardson, and J. G. Wilson, whereupon the following proceedings were had.

The opening statement of the jury was made on behalf of the plaintiff by F. S. Senn and an opening statement on the behalf of the defendant was made by James H. DeVine. Charles T. Early, being duly sworn, was called as a witness on behalf of the plaintiff to sustain the issues on behalf of the plaintiff. The testimony of said witness, Charles T. Early, both direct and cross, together with the exhibits offered by both the plaintiff and

defendant, the exceptions taken by respective counsel to said testimony, the motions to strike out said testimony of said Charles T. Early by the defendant, the offer of proof and the motion for a directed verdict by the defendant together with all the rulings of the Court in regard to said exceptions and motions and all the proceedings had in the above matter are as follows: [92]

Testimony of Charles T. Early, for Plaintiff.

CHARLES T. EARLY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. WILBUR.)

Where do you reside, Mr. Early?

Mr. DEVINE.—Before proceeding we desire to object to the introduction of any testimony under the complaint in this action, first upon the ground that the complaint does not state facts sufficient to constitute a cause of action against the defendant; second, upon the ground that these individual allegations contained in each paragraph of the complaint being specific take it out of the general class of employment, and for that reason it does not state facts sufficient to constitute a cause of action. Further, upon the issues joined in the opening statement of counsel for plaintiff in this action and the facts which he states he is about to prove, the plaintiff is not entitled to recover in this action.

COURT.—The sufficiency of the complaint was passed on by Judge Wolverton on demurrer, was

(Testimony of Charles T. Early.)

it not? It will be overruled and you can have your exception.

Q. Where do you reside, Mr. Early?

A. Portland.

Q. How long have you lived there, Mr. Early?

A. About eight or nine years, I think.

Q. And during that time, what has been your occupation generally?

A. Up to the fall of 1921, I was with the Oregon Lumber Company, the Oregon-American Lumber Company and the P. A. & P. Railway Company.

Q. The Oregon Lumber Company that you refer to was one of the Eccles interests? A. Yes, sir.

Q. In this state, and had lumber holdings in this state? A. Yes, sir. [93]

Q. And the Oregon-American Lumber Company, you say you represented that company?

A. Yes, sir.

Q. In what capacity did you represent that company in this state?

Mr. DEVINE.—Object to that as not the best evidence, if the Court please; hearsay.

COURT.—I think he may answer the question. Exception saved.

Mr. WILBUR.—That will raise the question of not only actual authority, but apparent authority, which we are going into in detail before we get through with this phase of the case. We will have to build it up generally along the line.

A. I always understood I was general manager.

(Testimony of Charles T. Early.)

Mr. DEVINE.—In the light of that answer, I move the Court to strike it out.

COURT.—Let him state what he did.

Mr. WILBUR.—I will follow it up later.

Q. Were you a stockholder in the Oregon-American Lumber Company? A. Yes, sir.

Q. State whether or not you were on the Board of Directors? A. I was.

Q. Were you a vice-president?

A. I am not certain about that, I think I was.

Mr. WILBUR.—I would like at this time, your Honor, to file a certified copy of the articles of incorporation of the Oregon-American Lumber Company as they were filed and certified to by the Clerk of the Court in Utah. I believe that has been stipulated by Mr. Munly. [94]

Plaintiff's Exhibit 1.

ARTICLES OF INCORPORATION

OF THE

OREGON-AMERICAN LUMBER COMPANY.

United States of America,

State of Utah,

County of Weber,—ss.

Whereas, the undersigned, whose full names and places of residence are

David C. Eccles, Ogden, Weber County, Utah.

M. S. Browning, Ogden, Weber County, Utah.

Joseph Scowcroft, Ogden, Weber County,
Utah.

Royal Eccles, Ogden, Weber County, Utah.

L. R. Eccles, Ogden, Weber County, Utah.

Charles T. Early, Baker, Baker County, Ore-
gon,

are desirous of associating themselves together for the purpose of forming a corporation under the laws of the State of Utah, have, for this purpose, adopted, and do hereby adopt, certify, agree and declare the following to be their Articles of Incorporation and Agreement, to wit:

Article 1.

The name of the corporation hereby formed shall be "Oregon-American Lumber Company," and is organized at Ogden City, County of Weber, State of Utah.

Article 2.

The corporation shall exist for one hundred years, unless sooner dissolved according to law.

Article 3.

The object, business and pursuit of the corporation hereby created is and shall be:

A. To conduct, pursue and carry on the business of [95] owning and operating sawmills, flumes, shingle mills, planing mills and all kinds of wood working machinery;

B. To own, operate, sell and dispose of lumber yards;

C. To buy, sell and manufacture lumber, lath, shingles, sash, doors, boxes and all other products manufactured from lumber;

D. To own, operate, manufacture generally, store, transmit, buy, sell and distribute electric current for heat, light and power, and to erect, buy, sell, lease and otherwise acquire, operate and maintain electric light, heating and power plants;

E. To purchase, own, acquire, encumber, sell and dispose of all kinds of real estate within or without the United States, either for the purpose of securing or supplying timber for the manufacture of lumber, or for the purpose of using such timber-lands (when cleared) or other lands for agricultural purposes of all kinds;

F. To appropriate, acquire, own and use the water of lakes and running streams for the development and furnishing of electrical power for any and all purposes;

G. To appropriate, acquire and own waters of lakes or running streams for the purpose of irrigation or supplying water for household or domestic construction, watering livestock and for general irrigation purposes;

H. To own, acquire, construct, operate and maintain irrigation streams; or other water ways, for the generation of electrical and other power for general sale and distribution, and for the operation of mills, lighting, heating and power plants, and for the general distribution of water, for sale and rental, for irrigation, domestic and livestock purposes, and for the purpose of irrigating lands belonging to this company and other individuals or concerns, and to dispose of any part or parts of such irrigation and power systems or water

rights in such manner as the [96] Board of Directors may from time to time determine;

I. To buy, sell, lease, distribute, or otherwise dispose of water and water rights;

J. To build transmission lines for light, heat, power, telephone, or telegraph purposes, and to acquire, buy, own or sell franchises or rights of way for any of the purposes herein mentioned;

K. To locate, enter upon, pre-empt, or otherwise acquire, in lawful manner, any of the public domain of the United States or any foreign country;

L. To own, handle and control letters patent and inventions, and shares of its own capital stock and that of other corporations, and to vote any other stock owned by the same, as a natural person might do;

M. To issue bonds, notes, debentures and other evidences of indebtedness, and secure the payment of the same by mortgage, deed of trust or otherwise;

N. To carry on any or all of the following businesses, namely; builders, contractors, decorators, merchants and dealers in stone, lime, brick, timber, hardware or other building requisites, brick and tile, terra cotta makers, job masters, carriers, licensed victualers and house agents;

O. To own, lease and operate tram roads, railroads, or other roads and steamboats and barges for the transportation of any commodities manufactured or produced by the company, or to convey any raw material to the mills or factories owned

or operated by the company; also side boons and pocket boons and shear boons at and near said mills for the purpose of catching and holding logs and other timber to be used and manufactured at said mills.

P. To lend money, either with or without security, and generally to such persons and upon such terms and conditions as the company [97] may think fit;

Q. And in general to do and perform such acts and things and transact such business, not inconsistent with the law in any part of the world, as the Board of Directors may deem to the advantage of the corporation, whether such branches of business are specifically mentioned herein or not.

R. The foregoing clauses shall be construed both as objects and powers, but no recitation, expression or declaration of specific or special powers, or purposes herein enumerated shall be deemed to be exclusive; but it is hereby expressly declared that all other lawful powers not inconsistent therewith are hereby included.

Article 4.

The general office of the corporation shall be at Ogden City, Weber County, Utah, but places of business and branch offices for conducting and carrying on any portion of the business may be established at any other place or places.

Article 5.

The amount of the capital stock of the corporation shall be Three Million, Five Hundred Thousand (\$3,500,000.00) Dollars, divided into thirty-five thou-

sand (35,000) shares of the par value of One Hundred (\$100.00) Dollars each.

Article 6.

The amount of capital stock subscribed and taken by each of the incorporators, parties hereto, is as follows:

Name	No. of Shares
David C. Eccles,	1000
M. S. Browning,	1000
Joseph Scowcroft,	500
Royal Eccles,	500
L. R. Eccles,	500
Charles T. Early,	500
David C. Eccles, Trustee,	31000

Article 7.

The number and kind of officers of the corporation shall [98] be as follows:

A Board of five (5) Directors, one of whom shall be President; one of whom shall be Vice-President of the corporation, and one may be Treasurer of the corporation and one may be Secretary of the corporation, provided, however, that the Secretary may, but need not, be a director or Stockholder of the corporation; and provided further that the Treasurer may, but need not, be a member of the Board of Directors of the corporation; provided also that the office of Treasurer may be held by the President or any Vice-President of the corporation, or by the Secretary when the Secretary is a Stockholder of the corporation.

Each person to be eligible to election as a Director must be the owner and holder, in his own

name, of at least one share of the capital stock, as shown by the books of the Company.

Three members of the entire Board of Directors shall be necessary to form a quorum, and be authorized to transact the business and exercise the corporate powers of the corporation.

The Board of Directors may appoint one of their own number, or any other person, General Manager of the corporation, and the duties of the General Manager shall be to look after and superintend all of the affairs of the Company, and, subject to such regulations as may be imposed by the Board of Directors, to employ all assistance and labor necessary therefor, contract for the compensation of all employees, and discharge any person so employed. The General Manager shall make report to the Board of Directors annually, or oftener if required so to do, setting forth in detail the results of operations under his charge, together with any suggestions looking to the improvement and betterment of the conditions of the Company, and to perform such other [99] duties as the Board of Directors shall require.

Article 8.

Within five days after the election of a Board of Directors, they shall hold a Directors' Meeting and elect a President, a Vice-President, a Secretary and a Treasurer.

Article 9.

(a) There shall be an annual meeting of the stockholders held at the office of the corporation in Ogden City, Weber County, Utah, on the second

Tuesday after the first Monday in January, 1918, and on the second Tuesday after the first Monday in January in each year thereafter, at such hour as the President or the Board of Directors may determine, for the purpose of electing a Board of (5) Directors, and transacting such other business as may be necessary or convenient for the welfare of the corporation.

(b) The Board of Directors may direct the calling of special meetings of the stockholders at such time as they may deem necessary; and at all such meetings of the stockholders, whether annual or special, a representation of a majority of the capital stock of the corporation shall be necessary for the transaction of business; and no business, except to adjourn, or to adjourn to a specified time, shall be transacted at any meeting of the stockholders unless a majority of the capital stock is represented.

(c) The officers of the corporation shall be elected by ballot, and the person having a majority of votes cast shall be deemed and declared duly elected. Each stockholder shall be entitled to as many votes as he holds shares of the capital stock, and representation by proxy, duly appointed, in writing, shall be allowed at all meetings of the stockholders, whether annual or special. [100]

(d) The failure to hold any annual or special meeting of the stockholders on the day or at the time appointed for the same shall not forfeit or interfere in any way with the corporate rights acquired under this agreement, and any such meeting may be held at any subsequent time, upon giv-

ing ten days' notice thereof, by publication in a daily newspaper published in Ogden City, Weber County, Utah.

The Secretary shall, and in case of his failure, any other officer of the corporation may give ten days' notice of all annual or special meetings of the stockholders, by publication, as aforesaid. The notice must specify the purpose or purposes for which any such meeting is called. Notice of all annual or special stockholders' meetings may be served by the Secretary, or other officer as the case may be, by delivering a copy to each stockholder, personally, or by depositing notice thereof in the United States Post Office, at Ogden, Utah, with postage prepaid thereon, at least ten days' prior to the date of such meeting, addressed to the addresses of the stockholders; which delivery of such notice, or the posting thereof as aforesaid, shall have the same effect as the publication thereof as aforesaid.

Article 10.

The term of office of all officers, except as provided in Article 11, shall be one year, and until their successors are elected and qualified.

Article 11.

Until the annual meeting of the Stockholders, to be held on the second Tuesday after the first Monday in January, 1918, and the election and qualification thereafter of a Board of Directors, the following named persons shall be the Directors of this corporation, to wit: [101]

David C. Eccles, M. S. Browning, Joseph Scowcroft, Royal Eccles, and Charles T. Early. And the

said David C. Eccles shall be President, and the said Charles T. Early shall be Vice-President, and the said M. S. Browning shall be Treasurer, and the said Royal Eccles shall be Secretary of the corporation, and the said David C. Eccles shall also be General Manager of the corporation.

Article 12.

The Board of Directors may hold meetings at the General office of the Company in Ogden City, Weber County, Utah, or at any other place of business of said corporation within the State of Utah.

The Board of Directors may fill vacancies occurring in the Board of any of the offices of the corporation until the next annual meeting for the election of officers.

Article 13.

The Board of Directors may enact by-laws for the conduct, regulation and management of the affairs of the corporation, and may change the same at pleasure.

Article 14.

Any officer of the corporation may be removed for conduct prejudicial to the interests of the corporation by a majority vote of the stockholders.

Article 15.

Any officer of the corporation may resign his office by giving the Board of Directors thirty days' notice thereof, in writing, before the same is to take effect, but such resignation may be accepted on shorter notice.

Article 16.

The private property of the stockholders shall

not [102] be liable for the debts, obligations or liabilities of the corporation.

Article 17.

The capital stock of this corporation, when issued, shall be fully paid and nonassessable.

Article 18.

The title to all property, real and personal, acquired by the corporation shall be vested in the corporation.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names this 20th day of June, A. D. 1917.

DAVID C. ECCLES,
By ROYAL ECCLES,
M. S. BROWNING,
JOSEPH SCOWCROFT,
By ROYAL ECCLES,
ROYAL ECCLES,
CHARLES T. EARLY,
By J. H. DEVINE,
L. R. ECCLES.

State of Utah,
County of Weber,—ss.

M. S. Browning, Royal Eccles and L. R. Eccles, three of the parties to the foregoing Articles of Agreement for the incorporation of the Oregon-American Lumber Company, being duly sworn, each for himself, and not one for the other, says:

I am one of the persons named in the foregoing Articles of Agreement for the incorporation of the Oregon-American Lumber Company, that it is the *bona fide* intention of said incorporators to com-

mence and carry on the business mentioned in this agreement; and that I verily believe that each party to said agreement has paid in full for the amount of capital stock in said corporation [103] subscribed for by him, and that all the stock subscribed for by each stockholder has been paid, and that more than one-third of the authorized capital stock of the corporation has been fully paid before the signing of these Articles of Incorporation.

M. S. BROWNING.

ROYAL ECCLES.

L. R. ECCLES.

State of Utah,
County of Weber,—ss.

On the 23d day of June, 1917, before me, the undersigned Notary Public in and for said County and State, personally appeared M. S. Browning, L. R. Eccles and Royal Eccles, three of the persons whose names are subscribed to the foregoing Articles of Incorporation as parties thereto, personally known to me to be the persons named therein, and who executed the agreement as parties thereto, and they, and each of them, then and there severally duly acknowledged to me that they and their associates executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and notarial seal, at Ogden City, Utah, the day and year herein first above written.

My Commission expires January 20, 1918.

[Seal]

J. H. DEVINE,

Notary Public.

Filed Jun. 26, 1917. C. M. Ramey, County Clerk.
By Winnifred Geiger.

State of Utah,
County of Weber,—ss.

I, Lawrence A. Van Dyke, County Clerk and *ex-officio* Clerk of the Second Judicial District Court of the State of [104] Utah in and for the County of Weber, do hereby certify that the foregoing is a full, true and correct copy of the original.

ARTICLES OF INCORPORATION
of the

OREGON-AMERICAN LUMBER COMPANY.

Filed in my office June 26th, 1917, as appears on file and of record in my office in Ogden City.

Witness my hand and seal, this the 15th day of March, 1923.

[Seal] LAWRENCE A. VAN DYKE,
Clerk.

I, Lawrence A. Van Dyke, Clerk of the District Court of the Second Judicial District, do hereby certify that I am the legal custodian of the records of Weber County, Utah, and the legal keeper of all of said records and that all of the records of Weber County, Utah, are in my possession; that the attached Articles of Incorporation of the Oregon-American Lumber Company is a full, true and correct copy of the original Articles of Incorporation of the Oregon-American Lumber Company, filed with me as the County Clerk of the County of Weber and State of Utah; that I have compared the same with the origi-

nal thereof and know that the same is a true, full and correct transcript of the original.

LAWRENCE A. VAN DYKE,
Clerk.

I, James N. Kimball, Judge of the District Court of the Second Judicial District of Weber County, Utah, certify that the aforesaid Lawrence A. Van Dyke is Clerk of Weber County, Utah, and is the Clerk of the District Court of the Second Judicial District of the County of Weber, State of Utah, and is the legal keeper and custodian of the papers and records of Weber County, Utah, and [105] that the foregoing signature is the signature of said Clerk and the foregoing seal is the seal of Weber County, Utah.

JAMES N. KIMBALL,
Judge.

I, Lawrence A. Van Dyke, Clerk of Weber County, Utah, certify that the foregoing James N. Kimball is Judge of the District Court of the Second Judicial District of Weber County, Utah, and is the duly acting, qualified and commissioned Judge of Weber County, State of Utah.

LAWRENCE A. VAN DYKE,
Clerk.

Mr. WILBUR.—I suppose it may be stipulated and understood that in place of reading this instrument or any other instrument introduced by either party, it may be read at any time by either party.

Mr. DEVINE.—That would certainly be true of the Articles of Incorporation.

Mr. WILBUR.—Calling your attention to the fact that Mr. Charles T. Early was one of the incorporators of the corporation, and the fact that the articles provide that the Board of Directors may appoint either a member of the board or any other person general manager of the corporation; that the duties of the general manager shall be to look after and superintend all of the affairs of the company, subject to such regulations as may be imposed by the directors.

Mr. DEVINE.—If you are going to read that portion of the articles, why don't you read that portion specifically appointing the general manager. [106]

Mr. WILBUR.—I am coming to that. You may read or either counsel may read any portion desired at any time. I will say to your Honor we are coming to a question here as to what is known as actual authority and apparent authority, and we expect to prove in this case, so that you may know what we will have, that Mr. Early was held up by the company in this State as the general manager of this company, and that Mr. Bates dealt with him as such. I would like to introduce now a certified copy from the officers of this State, showing the filing of the articles of incorporation in this state, so as to comply with the law, and this covers also the declaration of the purpose of that corporation to engage in business in the State of Oregon, and power of attorney executed by the Oregon-American Lumber Company under its seal and by its officers, David C. Eccles, President, Royal Eccles, Secretary, together

with the annual corporation report, showing that that company continued to comply with the law of the State of Oregon during the entire period mentioned in this complaint.

Mr. DEVINE.—It is admitted; that is not necessary.

Marked Plaintiff's Exhibit 2 and read: [107]

Plaintiff's Exhibit 2.

STATE OF OREGON.

CORPORATION DEPARTMENT.

I, W. E. Crews, Corporation Commissioner and Custodian of the Seal of the Corporation Department of the State of Oregon, DO HEREBY CERTIFY:

That I have carefully compared the annexed copy of articles of incorporation of Oregon-American Lumber Company with a certified copy of the articles of incorporation filed July 5, 1917; also the annexed copy of declaration of purpose to engage in business in the State of Oregon of said corporation with the original declaration of purpose filed July 5, 1917; also the annexed copy of power of attorney of said corporation with the original power of attorney filed July 5, 1917; also the annexed copy of information blank and affidavit of exemption of said corporation with the original information blank and affidavit of exemption filed August 28, 1917; also the annexed copies of annual reports for the fiscal years ending

June 30, 1918, June 30, 1919, and June 30, 1920, and June 30, 1921, with the original annual reports filed respectively September 23, 1918, July 11, 1919, June 18, 1920, and July 27, 1922; and find the same to be full, true and correct transcripts therefrom and of the whole thereof, together with all official endorsements thereon.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the seal of the Corporation Department of the State of Oregon.

Done at the Capitol, at Salem, Oregon, this 8th day of March, 1923.

W. E. CREWS,
Corporation Commissioner. [108]

STATE OF UTAH,
EXECUTIVE DEPARTMENT,

SECRETARY OF STATE'S OFFICE.

I, Harden Bennion, Secretary of State of the State of Utah, do hereby certify that the attached is a full, true and correct copy of the ARTICLES OF INCORPORATION OF THE

OREGON-AMERICAN LUMBER COMPANY,
as appears on record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah this 26th day of June, 1917.

[State Seal]

HARDEN BENNION,
Secretary of State.
By Jerrold R. Letcher,
Deputy.

United States of America,
State of Utah,
County of Weber,—ss.

I, C. M. Ramey, County Clerk in and for Weber County, in the State of Utah, do hereby certify that the incorporators of

OREGON-AMERICAN LUMBER COMPANY did on the 26th day of June, A. D. 1917, file in my office the Original Articles of Incorporation of said Corporation, duly acknowledged together with the oath of office of each director of said corporation, as is required by Sections 318 and 319 of Chapter 1, of Title 14, Compiled Laws of Utah, 1907;

AND I DO FURTHER CERTIFY, That the above and foregoing is a full, true and correct copy of said original Articles, deposited, filed and recorded in my office on said 26th day of June, A. D. 1917, as the same appears on file and of record.
[109]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this the 26th day of June, A. D. 1917.

[Seal]

Signed C. M. RAMEY,
County Clerk.

By Winnifred Geiger,
Deputy County Clerk.

(Filed in this the office of the Secretary of State of Utah on the 26th day of June, 1917.)

ARTICLES OF INCORPORATION

of the

OREGON-AMERICAN LUMBER COMPANY.

United States of America,
State of Utah,
County of Weber,—ss.

WHEREAS, the undersigned, whose full name and places of residence are

David C. Eccles, Ogden, Weber County, Utah.

M. S. Browning, Ogden, Weber County, Utah.

Joseph Scowcroft, Ogden, Weber County, Utah.

Royal Eccles, Ogden, Weber County, Utah.

L. R. Eccles, Ogden, Weber County, Utah.

Charles T. Early, Baker, Baker County, Oregon,
are desirous of associating themselves together for
the purpose of forming a corporation under the laws
of the State of Utah, have, for this purpose, adopted,
and do hereby adopt, certify, agree and declare the
following to be their Articles of Incorporation and
Agreement, to wit:

Article 1.

The name of the corporation hereby formed shall
be "Oregon-American Lumber Company," and is
organized at Ogden City, Weber County, State of
Utah.

Article 2.

The corporation shall exist for one hundred years
unless sooner dissolved according to law. [110]

Article 3.

The object, business and pursuit of the corpora-
tion hereby created is and shall be:

A. To conduct, pursue and carry on the business of owning and operating saw mills, flumes, shingle mills, *planing* mills, and all kinds of wood-working machinery;

B. To own, operate, sell and dispose of lumber yards;

C. To buy, sell and manufacture lumber, lath. shingles, sash, doors, boxes and all other products manufactured from lumber;

D. To own, operate, manufacture generally, store, transmit, buy, sell and distribute electric current for heat, light and power. and to erect, buy, sell, lease and otherwise acquire, operate and maintain electric light, heating and power plants;

E. To purchase, own, acquire, encumber, sell and dispose of all kinds of real estate within or without the United States, either for the purpose of securing or supplying timber for the manufacture of lumber, or for the purpose of using such timber lands (when cleared) or other lands for agricultural purposes of all kinds;

F. To appropriate, acquire, own and use the waters of lakes and running streams for the development and furnishing of electrical power for any and all purposes;

G. To appropriate, acquire and own waters of lakes or running streams for the purpose of irrigation or supplying water for household or domestic construction, water livestock and for general irrigation purposes;

H. To own, acquire, construct, operate and maintain irrigation streams, or other water ways, for the

generation of electrical and other power for general sale and distribution, and for the operation of mills, lighting, heating and power plants, and for the general distribution of water, for sale and rental, for [111] irrigation, domestic and live stock purposes, and for the purpose of irrigating lands belonging to this Company and other individuals or concerns. and to dispose of any part or parts of such irrigation and power systems or *or* water rights in such manner as the Board of Directors may from time to time determine;

I. To buy, sell, lease, distribute, or otherwise dispose of water and water rights;

J. To build transmission lines for light, heat, power, telephone, or telegraph purposes, and to acquire, buy, own or sell franchises or rights of way for any of the purposes herein mentioned;

K. To locate, enter upon, pre-empt, or otherwise acquire, in lawful manner, any of the public domain of the United States or any foreign country;

L. To own, handle and control letters patent and inventions, and shares of its own capital stock and that of other corporations, and to vote any other stock owned by the same, as a natural person might do;

M. To issue bonds, notes, debentures and other evidences of indebtedness, and secure the payment of the same by mortgage, deed of trust or otherwise;

N. To carry on any or all of the following businesses, namely: Builders, contractors, decorators, merchants and dealers in stone, lime, brick, timber,

hardware or other building requisites, brick and tile, terra cotta makers, job masters, carriers, licensed victualers and house agents;

O. To own, lease and operate tram roads, railroads, or other roads and steamboats and barges for the transportation of any commodities manufactured or produced by the Company, or to convey any raw material to the mills or factories owned or [112] operated by the Company; also side boons and pocket boons and shear boons at and near said mills for the purpose of catching and holding logs and other timber to be used and manufactured at said mills;

P. To lend money, either with or without security, and generally to such persons and upon such terms and conditions as the Company may think fit;

Q. And in general to do and perform such acts and things and transact such business, not inconsistent with the law in any part of the world, as the Board of Directors may deem to the advantage of the corporation, whether such branches of business are specifically mentioned herein or not.

R. The foregoing clauses shall be construed both as objects and powers, but no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed to be exclusive; but it is hereby expressly declared that all other lawful powers not inconsistent therewith are hereby included.

Article 4.

The general office of the corporation shall be at Ogden City, Weber County, Utah, but places of

business and branch offices for conducting and carrying on any portion of the business may be established at any other place or places.

Article 5.

The amount of the capital stock of the corporation shall be Three Million, Five Hundred Thousand (\$3,500,000.00) Dollars, divided into thirty-five thousand (35,000) shares of the par value of One Hundred (\$100.00) Dollars each. .

Article 6.

The amount of capital stock subscribed and taken by each of the incorporators, parties hereto, is as follows: [113]

Name.	No. of Shares.
David C. Eccles.....	1,000
M. S. Browning.....	1,000
Joseph Scowcroft.....	500
Royal Eccles.....	500
L. R. Eccles.....	500
Charles T. Early.....	500
David C. Eccles, Trustee.....	31,000

Article 7.

The number and kind of officers of the corporation shall be as follows:

A Board of five (5) Directors, one of whom shall be President; one of whom shall be Vice-President of the corporation, and one may be Treasurer of the corporation and one may be Secretary of the corporation, provided, however, that the Secretary may, but need not, be a Director or stockholder of the corporation; and provided further that the

treasurer may, but need not, be a member of the Board of Directors of the corporation; provided also that the office of Treasurer may be held by the President or any Vice-President of the corporation, or by the Secretary when the Secretary is a stockholder of the corporation.

Each person to be eligible to election as a Director must be the owner and holder, in his own name, of at least one share of the capital stock, as shown by the books of the Company.

Three members of the entire Board of Directors shall be necessary to form a quorum, and be authorized to transact the business and exercise the corporate powers of the corporation.

The Board of Directors may appoint one of their own number, or any other person, General Manager of the corporation, and the duties of the General Manager shall be to look after and superintend all of the affairs of the Company, and, subject to such regulations as may be imposed by the Board of Directors, to employ all assistance and labor necessary therefor, contract [114] for the compensation of all employees, and discharge any person so employed. The General Manager shall make report to the Board of Directors annually, or oftener if required so to do, setting forth in detail the results of operations under his charge, together with any suggestions looking to the improvement and betterment of the conditions of the company, and to perform such other duties as the Board of Directors shall require.

Article 8.

Within five days after the election of a Board of Directors, they shall hold a Directors' Meeting and elect a President, a Vice-President, a Secretary and a Treasurer.

Article 9.

(a) There shall be an annual meeting of the stockholders held at the office of the corporation in Ogden City, Weber County, Utah, on the second Tuesday after the first Monday in January, 1918, and on the second Tuesday after the first Monday in January in each year thereafter, at such hour as the President or the Board of Directors may determine, for the purpose of electing a Board of five (5) Directors, and transacting such other business as may be necessary or convenient for the welfare of the corporation.

(b) The Board of Directors may direct the calling of special meetings of the stockholders at such time as they may deem necessary; and at all such meetings of the stockholders, whether annual or special, a representation of a majority of the capital stock of the corporation shall be necessary for the transaction of business; and no business, except to adjourn, or to adjourn to a specified time, shall be transacted at any meeting of the stockholders unless a majority of the capital stock is represented. [115]

(c) The officers of the corporation shall be elected by ballot, and the person having a majority of votes cast shall be deemed and declared duly elected. Each stockholder shall be entitled to as many votes as he holds shares of the capital stock, and repre-

sentation by proxy, duly appointed, in writing, shall be allowed at all meetings of the stockholders, whether annual or special.

(d) The failure to hold any annual or special meeting of the stockholders on the day or at the time appointed for the same shall not forfeit or interfere in any way with the corporate rights acquired under this agreement, and any such meeting may be held at any subsequent time, upon giving ten days' notice thereof, by publication in a daily newspaper published in Ogden City, Weber County, Utah.

The Secretary shall, and in case of his failure, any other officer of the corporation may give ten days' notice of all annual or special meetings of the stockholders, by publication, as aforesaid. The notice must specify the purpose or purposes for which any such meeting is called. Notice of all annual or special stockholders' meetings may be served by the Secretary or other officer as the case may be, by delivering a copy to each stockholder, personally, or by depositing notice thereof in the United States Post Office, at Ogden, Utah, with postage prepaid thereon, at least ten days prior to the date of such meeting, addressed to the addresses of the stockholders; which delivery of such notice, or the posting thereof as aforesaid, shall have the same effect as the publication thereof as aforesaid.

Article 10.

The term of office of all officers, except as provided in Article 11, shall be one year, and until their successors are elected and qualified. [116]

Article 11.

Until the annual meeting of the Stockholders, to be held on the second Tuesday after the first Monday in January, 1918, and the election and qualification thereafter of a Board of Directors, the following named persons shall be the directors of this corporation, to wit:

David C. Eccles, M. S. Browning, Joseph Scowcroft, Royal Eccles, and Charles T. Early. And the said David C. Eccles shall be President, and the said Charles T. Early shall be Vice-President, and the said M. S. Browning shall be Treasurer, and the said Royal Eccles shall be Secretary of the corporation, and the said David C. Eccles shall also be General Manager of the corporation.

Article 12.

The Board of Directors may hold meetings at the general office of the Company in Ogden City, Weber County, Utah, or at any other place of business of said corporation within the State of Utah.

The Board of Directors may fill vacancies occurring in the Board or any of the offices of the corporation until the next annual meeting for the election of officers.

Article 13.

The Board of Directors may enact by-laws for the conduct, regulation and management of the affairs of the corporation, and may change the same at pleasure.

Article 14.

Any officer of the corporation may be removed for

conduct prejudicial to the interest of the corporation by a majority vote of the stockholders.

Article 15.

Any officer of the corporation may resign his office [117] by giving the Board of Directors thirty days' notice thereof, in writing, before the same is to take effect, but such resignation may be accepted on shorter notice.

Article 16.

The private property of the stockholders shall not be liable for the debts, obligations or liabilities of the corporation.

Article 17.

The capital stock of this corporation, when issued, shall be fully paid and nonassessable.

Article 18.

The title to all property, real and personal, acquired by the corporation shall be vested in the corporation.

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names this 20th day of June, A. D. 1917.

DAVID C. ECCLES,
By ROYAL ECCLES,
M. S. BROWNING,
JOSEPH SCOWCROFT,
By ROYAL ECCLES,
ROYAL ECCLES,
CHARLES T. EARLY,
By J. H. DEVINE,
L. R. ECCLES.

State of Utah,
County of Weber,—ss.

M. S. Browning, Royal Eccles and L. R. Eccles, three of the parties to the foregoing Articles of Agreement for the incorporation of the Oregon-American Lumber Company, being duly sworn each for himself, and not one for the other, says: [118]

I am one of the persons named in the foregoing Articles of Agreement for the incorporation of the Oregon-American Lumber Company, that it is the *bona fide* intention of said incorporators to commence and carry on the business mentioned in this agreement; and that I verily believe that each party to said agreement has paid in full for the amount of capital stock in said corporation subscribed for by him, and that all the stock subscribed for by each stockholder has been paid, and that more than one-third of the authorized capital stock of the corporation has been fully paid before the signing of these Articles of Incorporation.

M. S. BROWNING.

ROYAL ECCLES.

L. R. ECCLES.

Subscribed and sworn to before me this 23d day of June, 1917.

My Commission expires January 20, 1918.

J. H. DEVINE,

Notary Public.

State of Utah,
County of Weber,—ss.

On the 23d day of June, 1917, before me, the undersigned Notary Public in and for said County and State, personally appeared M. S. Browning, L. R. Eccles and Royal Eccles, three of the persons whose names are subscribed to the foregoing Articles of Incorporation as parties thereto, personally known to me to be the persons named therein, and who executed the Agreement as parties thereto, and they, and each of them, then and there severally duly acknowledged to me that they and their associates executed the same, freely and voluntarily, and for the uses and purposes therein mentioned. [119]

WITNESS my hand and notarial seal, at Ogden City, Utah, the day and year herein first above written.

My Commission expires January 20, 1918.

[Seal]

J. H. DEVINE,
Notary Public.

[Endorsed]: F-1296. Certified copy of Articles of Incorporation of the Oregon-American Lumber Company. Filed in the office of the Corporation Commissioner of the State of Oregon at 4:30 o'clock P. M., the 5th day of July, 1917.

H. J. SCHULDERMAN,
Corporation Commissioner.

DECLARATION OF PURPOSE TO ENGAGE
IN BUSINESS IN THE STATE OF
OREGON.

Know all Men by these Presents, That the Oregon-American Lumber Company, a corporation organized and existing under and pursuant to the laws of the State of Utah, having its principal office in the David Eccles Building in the City of Ogden, County of Weber and State of Utah, hereby makes the following declaration of its desire and purpose to engage in business within the State of Oregon, which declaration is accompanied by a duly authenticated copy of its Articles of Incorporation, in compliance with the provisions of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies, and associations, etc.," approved February 16, 1903:

The full name under which it proposed to transact business is Oregon-American Lumber Company.

The name of the state or country under whose laws [120] it was organized in Utah.

The location of its home office is in the David Eccles Building, Ogden City, Weber County and State of Utah.

The date of its formation or incorporation was the 26th day of June, A. D. 1917.

The amount of its capital stock is Three Million Five Hundred Thousand (\$3,500,000.00) Dollars.

The nature of the pursuit, business, or occupation in which it is authorized to engage is:

A. To conduct, pursue and carry on the business of owning and operating sawmills, flumes,

shingle mills, *planing* mills and all kinds of wood working machinery;

B. To own, operate, sell and dispose of lumber yards;

C. To buy, sell and manufacture lumber, lath, shingles, sash, doors, boxes and all other products manufactured from lumber;

D. To own, operate, manufacture generally, store, transmit, buy, sell and distribute electric current for heat, light and power, and to erect, buy, sell, lease and otherwise acquire, operate and maintain electric light, heating and power plants;

E. To purchase, own, acquire, encumber, sell and dispose of all kinds of real estate within or without the United States, either for the purpose of securing or supplying timber for the manufacture of lumber, or for the purpose of using such timber-lands (when cleared) or other lands for agricultural purposes of all kinds;

F. To appropriate, acquire, own and use the waters of lakes and running streams for the development and furnishing of electrical power for any and all purposes;

G. To appropriate, acquire and own waters of lakes or running streams for the purpose of irrigation or supplying water for [121] household or domestic construction, watering livestock and for general irrigation purposes;

H. To own, acquire, construct, operate and maintain irrigation streams, or other water ways, for the generation of electrical and other power

for general sale and distribution, and for the operation of mills, lighting, heating and power plants, and for the general distribution of water, for sale and rental, for irrigation, domestic and livestock purposes, and for the purpose of irrigating lands belonging to this company and other individuals, or concerns, and to dispose of any part or parts of such irrigation and power systems or water rights in such manner as the Board of Directors may from time to time determine;

I. To buy, sell, lease, distribute, or otherwise dispose of water and water rights;

J. To build transmission lines for light, heat, power, telephone or telegraph purposes, and to acquire, buy, own or sell franchises or rights of way for any of the purposes herein mentioned;

K. To locate, enter upon, pre-empt, or otherwise acquire, in lawful manner, any of the public domain of the United States or any foreign country;

L. To own, handle and control letters patent and inventions, and shares of its own capital stock and that of other corporations, and to vote any other stock owned by the same, as a natural person might do;

M. To issue bonds, notes, debentures and other evidences of indebtedness, and secure payment of the same by mortgage, deed of trust or otherwise;

N. To carry on any or all of the following businesses, namely; builders, contractors, decorators, merchants and dealers [122] in stone, lime, brick, timber, hardware or other building requi-

sites, brick and tile, terra cotta makers, job masters, carriers, licensed victualers and house agents.

O. To own, lease and operate tram roads, railroads, or other roads and steamboats and barges for the transportation of any commodities manufactured or produced by the company, or to convey any raw material to the mills or factories owned or operated by the Company; also side boons and pocket boons and shear boons at and near said mills for the purpose of catching and holding logs and other timber to be used and manufactured at said mills.

P. To lend money, either with or without security, and generally to such persons and upon such terms and conditions as the company may think fit;

Q. And in general to do and perform such acts and things and transact such business, not inconsistent with the law in any part of the world, as the Board of Directors may deem to the advantage of the corporation, whether such branches of business are specifically mentioned herein or not.

R. The foregoing causes shall be construed both as objects and powers, but no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed to be exclusive; but it is hereby expressly declared that all other lawful powers not inconsistent therewith are hereby included.

The location of the principal office within the State of Oregon is No. 830 Northwestern Bank

Building, in the City of Portland, and County of Multnomah.

The name of its attorney in fact, constituted and appointed in accordance with the provisions of Section 6 of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies, and associations, [123] etc.," approved February 16, 1903, is Charles T. Early, whose business address is No. 830 Northwestern Bank Building, in the City of Portland, County of Multnomah and State of Oregon.

The names and addresses of its principal officers, and of its directors or trustees, are as follows:

Name	Office	Postoffice Address
David C. Eccles	Director & President	David Eccles Building, Ogden, Utah.
Charles T. Early	Director and Vice-president	830 Northwestern Bank Bldg., Portland, Oregon.
M. S. Browning	Director and Treasurer	David Eccles Bldg., Ogden, Utah.
Royal Eccles	Director and Secretary	David Eccles Bldg., Ogden, Utah.
Joseph Scowcroft	Director	23rd Street and Wall Ave., Ogden, Utah.

The name and residence of its general agent within the State of Oregon is Charles T. Early, Portland, in the County of Multnomah.

IN WITNESS WHEREOF, said corporation, in pursuance of a resolution duly adopted by its Board of Directors has caused this declaration to be signed by its President and Secretary and its corporate seal to be affixed the 30th day of June, A. D. 1917.

[Corporate Seal]

OREGON-AMERICAN LUMBER CO.

DAVID C. ECCLES, [Seal]
President.

ROYAL ECCLES, [Seal]
Secretary.

State of Utah,
County of Weber,—ss.

I, David C. Eccles, President, and I, Royal Eccles, secretary of the Oregon-American Lumber Company, being severally duly sworn depose and say, and each for himself says, that I am [124] President and Secretary, respectively, of the Oregon-American Lumber Company, the corporation mentioned in, and which executed the foregoing declaration, and that said declaration is a full, true and correct statement of the matters therein contained according to the best of my information, knowledge and belief.

DAVID C. ECCLES.

ROYAL ECCLES.

Subscribed and sworn to before me this 30th day of June, 1917.

My Commission expires January 14, 1918.

[Seal]

J. H. DEVINE,

Notary Public in and for the County of Weber,
State of Utah.

State of Utah,

County of Weber,—ss.

I, Royal Eccles, Secretary of the Oregon-American Lumber Company, being first duly sworn depose and say upon oath that David C. Eccles is the President of said corporation and that the signature affixed to the above and foregoing declaration is the genuine signature of the said David C. Eccles; that the corporate seal hereinbefore attached and impressed herein is the corporate seal of said corporation, and was affixed thereto by me, and that the foregoing declaration was executed for the Oregon-American Lumber Company by its President and Secretary, pursuant to a resolution of the Board of Directors of said corporation duly adopted on the 27th day of June, A. D. 1917, so help me God.

ROYAL ECCLES.

Subscribed and sworn to before me this 30th day of June, 1917.

My Commission expires January 14, 1918.

[Notarial Seal]

J. H. DEVINE,

Notary Public in and for Weber County, State of
Utah. [125]

[Endorsed]: F-1296. Declaration of the Oregon-American Lumber Company. Filed in the office of the Corporation Commissioner of the State of Oregon at 4:30 o'clock P. M. the 5th day of July, 1917.

H. J. SCHULDERMAN,
Corporation Commissioner.

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:
That the Oregon-American Lumber Company is a corporation duly organized under and by virtue of the laws of the state of Utah, having its principal place of business in the City of Portland, County of Multnomah and State of Oregon.

That the said Oregon-American Lumber Company has made, constituted and appointed, and does hereby make, constitute and appoint Charles T. Early, a citizen of the United States and a citizen and resident of the State of Oregon, its true and lawful attorney in fact, and authorized agent for it, and in its name, place and stead to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the Courts of the State of Oregon or the United States Courts therein, and upon whom all lawful writs, processes and summonses may be served with the same effect as though the Company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of the said Oregon-American Lumber Company to any of the said Courts giving and granting unto the said Charles T. Early full power and authority

to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the said Oregon-American Lumber Company might or could do if personally present, hereby ratifying [126] and confirming all that the said Charles T. Early shall lawfully do or cause to be done by authority thereof.

This power of attorney is irrevocable except by the substitution of another qualified person for the one hereby appointed attorney in fact.

IN WITNESS WHEREOF, said corporation, in pursuance of a resolution duly adopted by its Board of Directors has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be hereto affixed the 30th day of June, A. D. 1917.

OREGON-AMERICAN LUMBER CO.

By DAVID C. ECCLES, [Seal]

President.

By ROYAL ECCLES, [Seal]

Secretary.

State of Utah,
County of Weber,—ss.

This certifies, that on this 28th day of June, A. D. 1917, before the undersigned, a notary public, in and for Weber County, State of Utah, personally appeared the within named David C. Eccles, the President, and Royal Eccles, the Secretary of the Oregon-American Lumber Company, the corporation mentioned in and which executed the foregoing power of attorney, and acknowledged

that they executed the same by the authority and on behalf of said Oregon-American Lumber Company.

The Secretary of said Oregon-American Lumber Company further acknowledged that the corporate seal hereinbefore attached and impressed herein is the corporate seal of said corporation and was affixed thereto by him.

In testimony whereof, I have hereunto set my hand and seal this 30th day of June, A. D. 1917.
[127]

My Commission expires January 14, 1918.

[Seal]

J. H. DEVINE,

Notary Public in and for Weber County, State of Utah.

[Endorsed] F-1296. Power of Attorney of the Oregon-American Lumber Company. Filed in the office of the Corporation Commissioner of the State of Oregon at 4:30 o'clock P. M., the 5th day of July, 1917.

H. J. SCHULDERMAN,
Corporation Commissioner.

INFORMATION BLANK.

Foreign Corporation.

For the Corporation Department of the State of Oregon.

1. Full name of company Oregon-American Lumber Company, a foreign corporation, organized and existing under and pursuant to the laws of Utah.

2. Name of attorney in fact in Oregon, CHAS.

T. EARLY. Address: 830 Northwest Bank, Portland, Oregon.

3. When declaration to engage in business within the State of Oregon filed? July 5th, 1917.

4. The nature and general plan of the business to be followed in Oregon. To do a general lumbering business and anything connected therewith.

5. The authorized capital stock, \$3,500,000; consisting of 35,000 shares, par value \$100.00 each.

6. The amount thereof subscribed at time of filing declaration to engage in business within the State of Oregon \$3,500,000; the amount remaining unsubscribed \$ none.

7. Will any of the above stock be for sale by the company within [128] this state? No.

8. Mention what, if any, stock, bonds, notes, contracts or other securities are to be issued by the company within this state — purchase Price
(If none please so state)

Mortgage.

.....
9. The officers and directors, and their addresses, are as follows:

David C. Eccles, President, Ogden, Utah.

Chas. T. Early, Vice-Pres., Portland, Oregon.

Royal Eccles, Secretary, Ogden, Utah.

M. S. Browning, Treasurer, Ogden, Utah.

L. R. Eccles, Director, Ogden, Utah.

Joseph Scowcroft, Director, Ogden, Utah.

DAVID C. ECCLES,
President.

ROYAL ECCLES,
Secretary.

July 11th, 1917.

Kindly fill out the above, signed by two of the principal officers of the company, and return at once to the Corporation Commissioner. No fee is required for this blank; if the corporation is a close corporation, and no securities are to be issued of any kind whatsoever to any one within the State of Oregon, the following should be executed also:

AFFIDAVIT OF EXEMPTION.

State of Utah,

County of Weber,—ss.

I, David C. Eccles, and I, Royal Eccles, being first duly sworn, depose and say:

That I, David C. Eccles, am the duly elected, qualified and acting President, and that I, Royal Eccles, am the duly elected, qualified and acting Secretary of Oregon-American Lumber Company ————— a corporation formed under and by virtue of the laws of —————; that I am fully conversant with, and qualified and authorized to speak of the affairs of the said corporation; that the said corporation does not intend to deal in any stocks, bonds, notes, contracts, or other securities, covered by Chapter II, Title XXXIC, Oregon Laws, as amended by Chapters 168 and 400, General Laws of Oregon for 1921, within the State of Oregon, underwriting or purchasing such securities and reselling to any person or persons within the State of Oregon; that the said corporation does not now come under and within [129] the definition,

scope or practice of a dealer as defined and set out in said chapter.

That no stocks, bonds, notes, contracts, or other corporate securities of this corporation will be sold, transferred or issued to any person, copartnership or corporation, within the State of Oregon, without first having obtained from the Corporation Commissioner a permit to do so; provided, this affidavit shall in no way prejudice any sale, by the *bona fide* owner of such corporate securities, not made in the course of repeated and continuing transactions of a similar nature.

[Corporate Seal]

DAVID C. ECCLES,

President.

ROYAL ECCLES,

Secretary.

Subscribed and sworn to before me by the said David C. Eccles and the said Royal Eccles above named, on this 24th day of August, 1917, at Ogden, Utah.

[Notarial Seal]

H. M. MONSON,

Notary Public for Weber County.

My Commission expires December 2d, 1920.

Annual Report—Foreign Corporation.

Note—This report must be filed on or before July 1. If incomplete or irregular, it cannot be accepted, and will be returned for correction.

“Every foreign corporation, joint stock company, or association, now doing business in this state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident,

life and accident, plate glass and steam boiler insurance companies, and casualty and surety companies, shall between July 1 and August 15 of each year, pay in advance to the Corporation Department of this state an annual license fee of \$200.00.”
—Section 6884, Oregon Laws.

ANNUAL REPORT TO THE CORPORATION
DEPARTMENT.

(In compliance with Section 6883, Oregon Laws.)

For the year ending June 30, 1918.

Of Oregon-American Lumber Company, a corporation
(Give legal name in full)
organized and existing under and pursuant
to the laws of Utah.

(State or County)

The location of its principal office is at No. —
Eccles Building, — Street in the City of Ogden,
in the State or County of Utah.

The name of the president, secretary and treasurer, the attorney in fact and managing agent in the State of Oregon, with the Postoffice address of each are as follows: [130]

Name	Office	Business
D. C. Eccles	President	Ogden, Utah.
Royal Eccles	Secretary	Ogden, Utah.
M. S. Browning	Treasurer	Ogden, Utah.
C. T. Early	Attorney in fact	Portland, Oregon.
C. T. Early	Managing Agent	Portland, Oregon.

The date of the annual election of directors and officers is the 2d Tuesday after the 1st Monday in January.

Amount of authorized capital stock.	\$3,500,000.00
Number of shares of capital stock.	35,000
Par value of each share.....	\$100.00
Amount of capital stock subscribed.	\$3,500,000.00
Amount of capital stock issued.....	\$3,500,000.00
Amount of capital stock paid.....	\$3,500,000.00

In witness whereof, I, Royal Eccles, Secretary
(Name) (Official title)
of said corporation, have signed this report, this
15th day of August, A. D. 1918.

ROYAL ECCLES.

State of Utah,
County of Weber,—ss.

I, Royal Eccles, being first duly sworn, depose
and say, upon oath, that I am Secretary of the
foregoing corporation, and that the above state-
ment is a full, true and correct statement of the
matters therein contained, according to the best of
my information, knowledge and belief.

ROYAL ECCLES.

Subscribed and sworn to before me this 15th day
of August, A. D. 1918.

[Notarial Seal] JED BALLANTYNE,
(Utah) Notary Public for *Oregon*.

My Commission expires April 16, 1920.

Annual Report—Foreign Corporation.

Note—This report must be filed on or before
July 1. If incomplete or irregular, it cannot be
accepted, and will be returned for correction.

“Every foreign corporation, joint stock com-
pany, or association, now doing business in this

state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident, life and accident, plate glass and steam boiler insurance companies, and casualty and surety companies, shall, between July 1 and August 15 of each year, pay in advance to the Corporation Department of this state an annual license fee of \$200.00."—Section 6884, Oregon Laws. [131]

ANNUAL REPORT TO THE CORPORATION
DEPARTMENT (In compliance with Section
6883, Oregon Laws) FOR THE YEAR END-
ING JUNE 30, 1919.

Of Oregon-American Lumber Company a corpo-
(Give legal name in full)

ration organized and existing under and pursuant
to the laws of Utah

(State or County)

The location of its principal office is at
No. 621 David Eccles Building in the City
of Ogden, in the state or county of Weber Co.,
Utah.

The names of the president, secretary and
treasurer, the attorney in fact and managing agent
in the State of Oregon, with the postoffice address
of each are as follows:

Name	Office	Business Address
David C. Eccles	President	621 David Eccles Bldg., Ogden, Utah.
Royal Eccles	Secretary	" " " "
Royal Eccles	Treasurer	" " " "
.....	Attorney in fact
Chas. T. Early	Managing Agent	Northwestern Natl. Bank Bldg., Portland, Ore.

The date of the annual election of directors and officers is Jan. 14, 1919.

Amount of authorized capital stock \$3,500,000.00

Number of shares of capital stock 35,000

Par value of each share \$100.00

Amount of capital stock subscribed \$3,500,000.00

Amount of capital stock issued \$3,500,000.00

Amount of capital stock paid up \$3,500,000.00

In witness whereof, I, Royal Eccles, Secretary

(Name) (Official title)

of said corporation, have signed this report, this 8 day of July, A. D. 1919.

ROYAL ECCLES.

State of Utah,

County of Weber,—ss.

I, Royal Eccles, being first duly sworn, depose and say, upon oath, that I am Secretary of the foregoing corporation, and that the above statement is a full, true and correct statement of the matters therein contained, according to the best of my information, knowledge and belief.

ROYAL ECCLES.

Subscribed and sworn to before me this 8 day of July, A. D. 1919.

[Notarial Seal]

JED BALLANTYNE,

Notary Public for Utah.

My Commission expires April 16, 1920. [132]

In the District Court of the United States for the
District of Oregon.

Annual Report—Foreign Corporation.

Note—This report must be filed on or before July 1. If incomplete or irregular, it cannot be accepted, and will be returned for correction.

“Every foreign corporation, joint stock company, or association, now doing business in this state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident, life and accident, plate glass and steam boiler insurance companies, and casualty and surety companies, shall, between July 1 and August 15 of each year, pay in advance To the Corporation Department of this State An Annual License Fee of \$200.00.” — Chapter 381, Laws of 1913, as amended by Chapter 179, Laws 1919.

ANNUAL REPORT TO THE CORPORATION
DEPARTMENT (In compliance with Section
6707, Lord's Oregon Laws) FOR THE YEAR
ENDING JUNE 30, 1920.

Of Oregon-American Lumber Company a corpo-
(Give legal name in full)
ration organized and existing under and pursuant
to the laws of Utah

(State or county)

The location of its principal office is at No. 621
David Eccles Building in the City of Ogden, in the
state or county of Utah.

The names of the president, secretary and treas-
urer, the attorney in fact and managing agent in

the state of Oregon, with the postoffice address of each are as follows:

Names	Office	Business Address
David C. Eccles	President	621 David Eccles Bldg., Ogden, Utah.
Royal Eccles	Secretary	621 David Eccles Bldg., Ogden, Utah.
Royal Eccles	Treasurer	621 David Eccles Bldg., Ogden, Utah.

(Attorney in Fact)

Chas. T. Early (Managing Agent) 1011 Yeon Bldg.,
Portland, Ore.

The date of the annual election of directors and officers is

Amount of authorized capital stock	\$3,500,000.00
Number of shares of capital stock	35,000
Par value of each share	\$100.00
Amount of capital stock subscribed	\$3,500,000.00
Amount of capital stock issued	\$3,500,000.00
Amount of capital stock paid up	\$3,500,000.00

In witness whereof, I, Royal Eccles, Secretary

(Official Title)

of said corporation, have signed this report, this 9th day of June, A. D. 1920.

ROYAL ECCLES,

Secretary. [133]

State of Utah,
County of Weber,—ss.

I, Royal Eccles, being first duly sworn, depose and say, upon oath, that I am secretary of the foregoing corporation, and that the above statement is a full, true and correct statement of the matters

therein contained, according to the best of my information, knowledge and belief.

ROYAL ECCLES,
Secretary.

Subscribed and sworn to before me this 9th day of June, A. D. 1920.

[Notarial Seal]

H. M. MONSON,
Notary Public for Utah.

My Commission expires Dec. 2, 1920.

Annual Report—Foreign Corporation.

Note—This report must be filed on or before July 1. If incomplete or irregular, it can not be accepted, and will be returned for correction.

“Every foreign corporation, joint stock company, or association, now doing business in this state, or that may hereafter do business in this state, except fire, marine, fire and marine, life, accident, life and accident, plate glass and steam boiler insurance companies, and casualty and surety companies, shall, between July 1 and August 15 of each year, pay in advance to the Corporation Department of this State an annual license fee of \$200.00.” Section 6884, Oregon Laws.

ANNUAL REPORT TO THE CORPORATION
DEPARTMENT (In compliance with Section
6883, Oregon Laws) FOR THE YEAR END-
ING JUNE 30, 1921.

Of Oregon-American Lumber Company a corpo-
(Give legal name in full)
ration organized and existing under and pursuant
to the laws of Utah

(State or county)

The location of its principal office is at No. 508 Platt Building, in the City of Portland, in the state or county of Oregon.

The names of the president, secretary and treasurer, the attorney in fact and managing agent in the State of Oregon, with the postoffice address of each are as follows:

Names	Office	Business Address
Chas. S. Keith	President	Keith & Perry Bldg., Kansas City, Mo.
J. E. Broughal	Secretary	" " "
J. E. Broughal	Treasurer	" " "
Jas. G. Wilson	Attorney in Fact	508 Platt Bldg., Portland, Ore.
J. F. Cooper	Managing Agent	1017 Yeon Bldg., Portland, Ore.

The date of the annual election of directors and officers is 2d Tuesday after 1st Monday in January each year. [134]

Amount of authorized capital stock \$3,500,000.00

Number of shares of capital stock au-
thorized 35,000

Par value of each share \$100.00

Amount of capital stock subscribed \$1,577,500.00

Amount of capital stock issued \$1,577,500.00

Amount of capital stock paid up \$1,577,500.00

In Witness Whereof, I, J. E. Broughal,
(Name)

Secretary-Treasurer of said corporation, have
(Official title)

signed this report, this 24th day of July, A. D. 1922.

J. E. BROUGHAL,
Secretary-Treasurer.

(Testimony of Charles T. Early.)

State of Missouri,
County of Jackson,—ss.

I, J. E. Broughal, being first duly sworn, depose and say, upon oath, that I am Secretary-Treasurer, of the foregoing corporation, and that the above statement is a full, true and correct statement of the matters therein contained, according to the best of my information, knowledge and belief.

J. E. BROUGHAL.

Subscribed and sworn to before me this 24th day of July, A. D. 1922.

[Notarial Seal] HARRIET P. McCAIN,
Notary Public for Jackson Co., Missouri.

My Commission expires —.

My Commission expires Jan. 8, 1924.

Mr. DEVINE.—If this is being offered for the purpose of showing the authority of Charles T. Early to make such general employment as is alleged in this complaint, the filing of the annual statement of the officers in statutory form in the State of Oregon, then we object as incompetent for that purpose.

Objection overruled; exception saved.

Q. From the time you went into this company in 1917, will you tell the jury what duties or acts you performed for this corporation with their knowledge and consent generally.

A. Well, immediately after the property was purchased, we sought the best methods of developing the property. The property was bought for devel-

(Testimony of Charles T. Early.)

opment and not for holding or for speculation. It [135] had no transportation and I think about the first thing that was done was to arrange with Mr. Bates to look up the McCormick property and the Portland & Southwestern Railroad.

Q. Who made those arrangements with Mr. Bates, did you or who was it? A. I did.

Mr. DEVINE.—I am going to object again, upon the ground that it is not the best evidence. There is no authority in this man to make any such arrangements.

COURT.—That is a question of proof. Depends upon what he did, I suppose, and how the company held him out. I don't know whether he had authority or not.

Exception saved.

Q. I am coming to that a little bit later. Did you attend meetings of the corporation in Salt Lake City or Ogden?

A. Not in the early history of the company.

Q. When did you attend meetings there?

A. I think it was in 1920. I am not certain that I ever attended a meeting before 1920.

Q. Were you in conference with the officers prior to that time? A. Yes, sir.

Q. What ones?

A. Well, particularly the President of the company, Mr. David C. Eccles.

Q. How often would you be in contact with Mr. Eccles?

A. Oh, he would come out and sometimes would

(Testimony of Charles T. Early.)

stay for a day or two, sometimes he would stay for a week.

Q. Was all the property of the corporation in timber holdings in this state?

A. I don't understand the question.

Q. Was all the timber holdings and property of that corporation in this state? A. Yes, sir. [136]

Q. As far as you know, did any other officers of this corporation or director live in the state besides yourself? A. No, sir.

Q. Who handled here the business of this company in the handling and operation of the property?

A. I did.

Q. I wish you would state—the Court has said that what it wants to know and what the jury wants to know, is what you did, Mr. Early, in your capacity in reference to the Oregon-American Lumber Company. Can't you tell just exactly what you did?

A. Yes, there wasn't a great deal done just at that time. I looked after the taxes, hired a tax agent and hired cruisers when it was necessary to hire them, and arranged for fire patrol.

Q. In hiring people here, state whether or not you did that yourself here on your own authority for this company?

A. I did all that I have stated, yes, sir.

Q. Now the question you say of tax agent, what was that?

A. Well, we hired a man by the name of Mr. Starr, C. L. Starr, to look after our taxes in the

(Testimony of Charles T. Early.)

various counties. He represents most of the timber holders on the coast here, a very good man, and he had plenty of time to do it and I didn't.

Q. Now, what I want to get at, was he employed by you or was that referred to the company? Did you make that employment? A. I hired him.

Q. Did the company subsequently learn of that, or know of it, that you had hired Mr. Starr for tax matters?

A. Mr. Eccles knew of it. I don't know about the other people.

Q. State whether or not there was any objection.

A. No, sir.

Q. Mr. Starr was paid, was he? A. Yes, sir.

Q. By whom?

A. Undoubtedly by the Oregon-American Lumber Company.

Mr. DEVINE.—That is a conclusion.

COURT.—State what you know about it. [137]

A. Well, he was paid, not only by the Oregon-American Lumber Company, but other Eccles interests that he represented. He represented the Oregon Lumber Company, the Sumpter Valley Railway, and the Mt. Hood Railway.

Q. In handling their business, did you hire or employ attorneys at times?

A. Well, we used the same attorneys that we had had for twenty years or more. Any business we had we went to them.

Q. That is the same attorneys?

(Testimony of Charles T. Early.)

A. Huntington & Wilson.

Q. And any employment you had there for the Oregon-American Company, who made that employment or request for the attorneys?

A. Well, whatever business that came up that we had to consult an attorney, we took it there. I arranged with them as to fee.

Q. For the Oregon-American Lumber Company?

A. Yes, sir.

Q. State whether or not those were paid by the Oregon-American Lumber Company.

A. They undoubtedly were.

Q. Was any objection ever raised as far as that was concerned, to your handling that matter, employing attorneys to look after their affairs?

A. Not to my knowledge.

Q. Now, the question of any office help, or other things of that kind in handling their office here, who employed that help?

A. Well, I talked that over with the cashier, but he usually hired the help.

Q. But under whose general direction and supervision?

A. Well, under my supervision. If it was necessary to put on another man, or woman, why we discussed it and he was authorized to do it.

Q. Now, how many meetings did you attend, would you say, at Salt Lake or Ogden—where were those meetings held? A. Ogden.

Q. How many stockholders or directors' meetings did you attend? A. I think about four.

(Testimony of Charles T. Early.)

Q. All of them at Ogden?

A. All at Ogden, yes.

Q. Who were present at those meetings?

A. Well, I don't know as I could name everybody that was present.

Q. Well, do as well as you can.

A. There was Mr. DeVine.

Q. That is the gentleman sitting here?

A. Yes, sir. Mr. Browning, Mr. Royal Eccles, J. M. Eccles, Marrian Eccles, Joe Scowcroft and I think Mr. Wattles.

Q. What was it you said a moment ago about Mr. Eccles coming here occasionally?

A. Well, he resided in Ogden until recent years, and he would make trips here as often as he could and he would sometimes stay a day or two, and sometimes stayed a week, depending entirely upon what he had to do elsewhere.

Q. And Mr. Eccles, as I understand, was president of the company? A. Yes, sir.

Q. And in your work which you did here generally, and I am coming to it more specifically later, did you at those meetings or when you met Mr. Eccles here in Portland, and were with him from two days to a week on his visits—what was done about acquainting him with what you were doing here and how you were holding yourself out to the public?

Mr. DEVINE.—Objected to as calling for a conclusion of this witness, and assuming he ever did

(Testimony of Charles T. Early.)

state to Mr. Eccles how he was holding himself out to the public.

COURT.—Let him state, if he did, he can so say.
Exception saved.

Mr. WILBUR.—Under the question of ratification by officers of the company.

Mr. DEVINE.—On that ground, if the Court will permit [139] me, I now object further upon the ground that Mr. Eccles had no such authority to bind the company to any ratification of the character here for the acts alleged as services in this complaint.

Objection overruled, exception saved.

A. Well, we discussed in a general way most everything that came up. I never told Mr. Eccles that I was holding myself out to the public as General Manager or anything else. That phase of it we never discussed, but I told him what I was doing. We were occupying our time, however, more particularly with operating properties here than we were with the Oregon-American Company.

Q. The idea being at that time not to dispose of your property but to develop to operate?

A. Yes, sir.

Q. And in the complaint in this case, which has been spoken of here, I believe you spoke of the McCormick matter, which you have talked with Mr. Bates about. Did you ever discuss that particular matter or phase with Mr. Eccles or the directors?

A. I discussed it with Mr. Eccles. In fact, we

(Testimony of Charles T. Early.)

were down there together with Mr. Eccles; made one or two trips.

Q. Then on this, which is known as the first item here, the McCormick and St. Helens matter, I understand you and Mr. Eccles, president of the company, and Mr. Bates went out on it?

A. Yes, sir.

Q. Do you know what was said to Mr. Eccles as the president of this company as to what was being done, or what Bates was doing? Or the relation between you and Bates?

A. Well, Mr. Eccles knew first, I think—

Mr. DEVINE.—Just a moment, I object to the statement of what Mr. Eccles knew.

COURT.—State what was said, not your conclusion.

Q. As near as you can, Mr. Early, what was said? I presume you [140] can't remember the exact language, etc., but they were objecting to it because it is a conclusion, but as to what was said in a general way with Mr. Eccles there, as to the relation of Mr. Bates?

A. Well, Mr. Bates was instructed to get an option on the McCormick—

Mr. DEVINE.—We object to that as being a conclusion. He was asked what was said, and we are entitled to know.

A. Well, I won't attempt, your Honor, to use the language, because I couldn't.

COURT.—You can state in substance what was said, not your conclusion.

(Testimony of Charles T. Early.)

A. I think that can be shown in writing better than anything that I might say.

Q. There is a technical objection made here that it is a conclusion as to what they understood, but you three men were out there on this matter, and what I want to know is as to any statement they may have made. While you can't remember the exact language, we all know that, as to what was—I was going to say understood, but that is a word I should not use—what was said there as to Mr. Bates and as to what he was to do there?

A. Well, he was directed to get this option and he did get it for a period of six months.

Q. Who was he directed by?

A. Mr. Eccles and I.

Q. Now, relative to the Coleman Wheeler deal, which has been referred to there, the traffic arrangement, was Mr. Eccles out in any of the deals connected with that, any of the trips connected with that?

A. I am not certain. I think he made one trip, but I would not be positive.

Q. Was he with Mr. Bates at that time, or do you know?

A. I think Mr. Bates was along. He was along at the time that I think Mr. Eccles was along. [141]

Q. Was there any statement or talk in any way between Mr. Eccles as the president of that company, who was here on a visit and yourself, as to the relation of Mr. Bates?

(Testimony of Charles T. Early.)

A. I don't remember any particular conversation. Mr. Bates was directed to—

Mr. DEVINE.—Just a moment, we object to what Mr. Bates was directed as a proposition coming from nobody in particular.

Q. I will ask you to build this up; in the first place, was Mr. Bates, as far as that matter was concerned, directed by you to do anything?

A. Yes, sir.

A. I will ask you whether or not Mr. Eccles knew or was informed of what you had directed Mr. Bates to do? A. He was.

Q. As to Mr. Bates, did Mr. Eccles at that time make any objection? A. He did not.

Q. To your authority or employment of him?

A. He did not.

Q. Coming then to the Portland & Southwestern Deal, which was referred to in this matter, did Mr. Bates receive any employment at that time?

A. Yes.

Q. From whom? A. From me.

Q. I wish you would state whether or not that was made known to Mr. Eccles or the officers of the corporation.

A. Yes, he knew of it.

Q. Did they make any objection to that?

A. They did not.

Q. Coming then to the Mitsui deal, did Mr. Bates have any employment at that time relative to this matter? A. Yes, sir.

Q. From whom? A. From me.

(Testimony of Charles T. Early.)

Q. Was any knowledge of that brought home to any of the officers of the Company? A. Yes, sir.

Q. Any objection made by the company in any way? A. No, sir.

Q. Relative to the United Railway deal, did Mr. Bates have any employment [142] in that matter from you? A. He did.

Q. From whom? A. From me.

Q. Was knowledge of that brought home to this company? A. It was.

Q. Were you three out on any trips in connection with that at any time? A. I think we—

Mr. DEVINE.—Just a moment, I want to object to that. I don't want to continually object. I am not objecting to leading questions being asked this witness, questions similar to the one just answered, was knowledge brought home to the company—yes, sir, it was, his answer. It seems to me that counsel ought to confine himself to a more specific question. We are not objecting to his leading questions for the reason we don't want to encumber the record.

Q. Well, coming to the Mitsui deal—counsel desires to have that more specific—what knowledge if any was brought home to this company of the fact that you had employed Mr. Bates?

A. That had to do with selling of some 6300 acres of stumpage combined with the Wheeler holdings. That transaction was brought about by my ascertaining through Mr. Dant of Dant & Russell, that the Mitsui people wanted an operating proposition. I had heard Mr. Bates say that he had had an

(Testimony of Charles T. Early.)

option on this property once before, and it was my suggestion that he get an option on the Wheeler holdings which weren't large enough. They didn't have timber enough to satisfy the Mitsui people and include the 6300 acres of Oregon-American timber in that sale to dispose of it.

Q. The point I am after now, what knowledge was brought home to the officers of the Oregon-American Lumber Company?

COURT.—Confine it to a particular officer.

A. Mr. David C. Eccles knew about it and gave the price \$3.00 per thousand, as I remember it.

Q. At which the— [143]

A. Oregon-American would dispose of their holdings.

Q. And what knowledge did Mr. Eccles have that Mr. Bates was doing that work.

A. He had full knowledge.

Q. Had you discussed it yourself with Mr. Eccles? A. Yes, sir.

Q. Now, as to the United Railways, state whether or not there was any employment of Mr. Bates on that matter, that lease of the United Railways, ninety-nine year lease, I believe.

A. Well, more particularly, his employment was connected—it resulted in a lease, but his employment was more particularly in connection with purchase.

Q. In connection with purchase?

A. We started out to buy the United Railroad. It

(Testimony of Charles T. Early.)

was represented we could get it for a certain amount of money.

Q. By whom was he instructed to make these negotiations? A. I directed him.

Q. And was knowledge of that brought home to the company? A. Mr. Eccles, yes.

Q. To Mr. Eccles. Will you state whether or not Mr. Eccles and Mr. Bates together went down over that property?

A. I don't think we went over the railroad together. Mr. Bates and I went over the railroad but I don't think Mr. Eccles was along.

Q. Now, relative to the Anna Smith and Reimers matters referred to in the complaint, and that have been mentioned. Was there any instruction or employment of Mr. Bates in reference to that matter.

Mr. DEVINE.—I object to that question as leading. He can state what was said. Whether there was employment is a conclusion entirely.

Q. All right, relative to this what happened? I will accept counsel's objection. What happened relative to Mr. Bates?

A. Mr. Bates negotiated with these people.

Q. How did he happen to negotiate with them?
[144]

A. Because in the meantime it had been decided that they would sell an interest in the property, either sell the stock or sell some of the stumpage.

Q. Oh, they had changed their plans?

A. Yes, sir.

(Testimony of Charles T. Early.)

Q. When was that plan changed?

A. Well, I couldn't give you the exact date, but it was after financial matters got in very much worse shape than they had been.

Q. Was that done at Salt Lake, do you know?

A. Well, the information came to me through Mr. Eccles.

Q. You say that was on account of financial matters that they changed their plans and decided to sell. Did Mr. Bates do any work on that?

A. Yes, sir.

Q. How did he happen to do that work, at whose instance?

A. That was at my instructions and I think Mr. Eccles directed him in some instances.

Q. Did Mr. Eccles, while Mr. Bates was working on the matter, do you know, meet with Reimers and Smith and Denkham?

A. He met Mr. Reimers, I think, in Chicago, but I don't know about Smith.

Q. Now, about the Collins matter, will you state whether Mr. Bates did any work on that?

A. Yes, more so than most any local matter, I think the Collins matter was up two or three times.

Q. And at whose instance did Mr. Bates do that work?

A. In the first instance, I think mine, in the last I think Mr. Eccles.

Q. Will you state whether or not Mr. Bates' relation to that work was known to the president, Mr. Eccles, and if so, how. What I want to get at

(Testimony of Charles T. Early.)

is if that knowledge was brought home to the company, and if so, how? [145]

A. He knew all about it, discussed it with Mr. Bates and discussed it with me.

Q. Did he make any objection to the employment of Mr. Bates? A. No, sir.

Q. The next one which is relative to the sale of the Wheeler timber, did Mr. Bates do any work upon that? A. Yes, sir.

Q. At whose instance? A. Mine.

Q. I would ask you to state whether or not that matter was brought to the knowledge of Mr. Eccles or any officer of the company, and if so, how, in what manner? A. To Mr. Eccles.

Q. What was that?

A. To Mr. Eccles by discussion.

Q. About the Owens transaction which is alleged here, did Mr. Bates do any work upon that?

A. I think so, yes.

Q. Who employed him?

A. I think that was on more of the stock as I recall it, stock selling.

Q. A stock sale?

A. Yes, he had those instructions from Mr. Eccles.

Q. He had what?

A. He had those instructions from Mr. Eccles.

Q. That is Mr. Eccles direct and not through you? A. Yes, sir.

Q. So you don't know as much about that. How

(Testimony of Charles T. Early.)

about the matter of the Mann transaction? Did he have any dealings there that you know of?

A. Yes.

Q. Who employed Mr. Bates? A. I did.

Q. State whether or not there was any knowledge of that brought home to the company, and if there was, in what manner?

Mr. DEVINE.—Object to the first portion of that question.

COURT.—I think it ought to be confined to the officers of the company.

Q. I assume it meant the officers of the company.

A. Mr. Eccles was the only officer outside of myself that knew about it.

Q. And did Mr. Eccles make any objection that you know of?

A. Not to my knowledge, no, sir. [146]

Q. Relative to the Stanley Dollar transaction, did Mr. Bates have any employment as the result of that? A. Yes, sir.

Q. By whom was he employed?

A. I think he had specific instructions from Mr. Eccles as to that transaction.

Mr. DEVINE.—I move to strike out what the witness thinks.

COURT.—That is your opinion and may be stricken out.

Q. Did you have anything to do with him relative to the Stanley Dollar matter?

A. I discussed it and knew negotiations were under way, yes.

(Testimony of Charles T. Early.)

Q. Were you present at any time when there were any discussions between Mr. Bates and Mr. Eccles as president of the Oregon-American Company?

A. I think I was in the office when Mr. Bates brought Mr. Dollar in.

Q. And was Mr. Eccles there?

A. Yes, the conference was with Mr. Eccles.

Q. Did you hear any of their conversation?

A. No, sir.

Q. As far as the Noble transaction was concerned, was there any employment there of Mr. Bates?

A. Yes, that was a matter that I took up, pure and simple. I don't know whether Mr. Eccles knew anything about it or not.

Q. You don't know whether Mr. Eccles knew it or not?

A. I don't know; it was a small transaction involving, I think one or two quarter sections of timber; it was immediately on the line of the P. A. & P. Railroad, and I thought we could get in an immediate operation while they were constructing the balance of the road.

Q. Relative to the Kerry deal, was there any employment in that matter of Mr. Bates?

A. Yes, sir.

Q. By whom? A. By me.

Q. I will ask you whether or not any knowledge of that was brought home to the officers of the company—Mr. Bates' activities?

(Testimony of Charles T. Early.)

A. Yes, I think I can say to all the officers and all the directors.

Q. Was any objection ever made to Mr. Bates' work as far as that [147] was concerned?

A. Not to my knowledge.

Q. And as far as the Keith transaction, when the stock was finally sold to the Central Coal & Coke Company for approximately seven millions, or something of that kind, had Mr. Bates received any employment as far as that matter was concerned? A. Yes, sir.

Q. Had any knowledge of that been conveyed to the officers of the company, and if so, in what manner and to whom?

A. Yes, I think that was understood by the entire board.

Mr. DEVINE.—I move to strike that answer out if the Court please.

COURT.—State what occurred, what was said, not your opinion.

A. Well, at a board meeting—

Q. Did you attend that meeting? A. Yes, sir.

Q. Where was it held? A. At Ogden, Utah.

Q. Go ahead.

A. At a board meeting where these matters were under discussion, the Keith and other matters, it was proposed by Mr. Devine that they make a wash sale, and eliminate Mr. Bates and all other brokers. They thought there might be various ones in Chicago who would claim a commission, and it was decided at this meeting that a wash sale would be

(Testimony of Charles T. Early.)

held, and I think Mr. Eccles was notified in Chicago that the property was sold, for him to come home.

Q. I don't understand just exactly what you say was proposed by Mr. Devine, that they have a wash sale; you say that this was proposed by Mr. Devine? A. Yes, sir.

Q. So they could do what to Mr. Bates?

A. They would eliminate any chance of having to pay commission to Mr. Bates or any one else in Chicago or other places, that might have been working on the property. [148]

Q. That was by selling stock instead of land?

A. Selling the stock wasn't discussed at that time; it was discussed subsequently.

Q. Now, was any objection made at that time or at any time, as far as the Keith deal was concerned, to your employment of Mr. Bates?

A. Yes, Mr. Bates was notified that his services would be no longer needed, as they were in touch with the principals in the east.

Q. When was the meeting that Mr. Bates was notified that his services would be no longer required?

A. I couldn't give you the date, but there was a wire sent in, I suppose he has the wire.

Q. I will ask you if you can fix the date according to approximately the date when the stock was sold to the Central Coal & Coke Company?

A. Well, I think Mr. Bates was notified in October, and I don't really know when they did close

(Testimony of Charles T. Early.)

up with the Central Coal & Coke Company, but it was many months afterwards.

Q. Was any notification given to Mr. Bates at that time, or did Mr. Bates do any work after that that you know of?

A. No, I think when he was notified to stop, he stopped.

Q. Because then the whole thing had been turned over to the Central Coal & Coke Company, was that the point?

A. Well, others were carrying on the negotiations.

Q. In closing up the stock deal? A. Yes, sir.

Q. After that time did Mr. Bates do any further work that you know of?

A. I haven't any in mind.

Q. Now, on behalf of this hiring that you have spoken of, or contracts that you have made with Mr. Bates, on behalf of whom did you undertake to make those contracts?

Mr. DEVINE.—Objected to as calling for the conclusion of the witness. [149]

COURT.—I think he can answer that.

Exception saved.

A. The Oregon-American Lumber Company.

Q. Did you tell Mr. Bates whom you were employing him for?

A. I wouldn't say whether that was discussed or not, the name of the company. Mr. Bates knew as well as I did, I think.

(Testimony of Charles T. Early.)

Q. Now, in all of these transactions which I have referred to—and I won't attempt to repeat them now—I will ask you to state whether or not at any time the defendant company made any objection known to you of your employment of Mr. Bates, or objected thereto.

A. I have no recollection of any.

Mr. WILBUR.—I think you may take the witness with the understanding that I am putting Mr. Early upon the stand at the present time purely for the purpose of showing his relationship with the company and the way in which he was held out, leading up to the matter, and these as to these various deals I will want to recall Mr. Early later.

Mr. DEVINE.—If they have something further with this witness I think they should finish with him before we proceed to cross-examination. They have touched upon every issue in this complaint, if the Court please, and every allegation in the complaint. If they have other proof by this witness, I think we should have that before we are called upon to cross-examine.

COURT.—Counsel can take his own course.

Mr. WILBUR.—My apprehension of the method of trial, the first thing that would be up here would be to trace Mr. Early's authority as to Mr. Bates' position. That is I understand that the question of principal and agent would be one of first interest, and that is the thing that I was endeavoring to prove by Mr. Early, his position with the company and his position with Mr. Bates. [150] Then I

intend to follow the matter up with Mr. Bates on these transactions, and then with Mr. Early on the main proposition.

COURT.—Mr. Devine seems to be satisfied with Mr. Early's testimony up to this time.

Mr. DEVINE.—I am not satisfied—

COURT.—I mean to let it stand as it is.

Mr. DEVINE.—I am satisfied to let it stand as it is, reserving the right to cross-examine in full and to place the witness upon the stand for cross-examination if he is not recalled by the plaintiff.

COURT.—Very well; as it now stands, he was held out by the concern as its authorized agent to represent them as far as the testimony now goes.

Mr. WILBUR.—I understand counsel waives cross-examination.

Mr. DEVINE.—No, I don't, I reserve it.

Mr. WILBUR.—Subject to the further orders of the Court.

COURT.—Subject to cross-examination when Mr. Early is called back the second time, but as I say leaving it as it is now, there is *prima facie* showing at least that he was held out by this concern as the general manager for Oregon, and the authorized representative, and that he made these contracts, if they were made at all, with the acquiescence of the president of the company.

Mr. DEVINE.—If the Court will bear with me for a moment, of course the procedure may be somewhat different that I have in mind, and I want to consult with my Oregon associates.

Mr. WILBUR.—I have a letter which I have just found, which I would like to introduce in evidence, from Mr. Early to Mr. Bates.

Mr. DEVINE.—Objected to as incompetent, irrelevant and immaterial to any issue in this case, upon the ground that there is no showing up to the present time that Mr. Charles T. Early, the witness here who purports to have signed this letter, had any power [151] whatsoever to make any such employment as is contended for here.

COURT.—What does it refer to, alleged employment?

Mr. DEVINE.—Yes.

Mr. WILBUR.—If counsel takes that stand, we will not insist.

Mr. DEVINE.—If the Court please, I am first going to ask to strike all Mr. Early's testimony on the ground that it is not under the theory of this complaint at all. This testimony goes entirely to a series of separate hirings and employments for entirely different and disconnected purposes, and not under any general contract of hiring as alleged, and as the theory upon which this action is brought.

COURT.—What is the theory of the complaint? I don't know.

Mr. DEVINE.—The theory of the complaint, as I understand the Court's interpretation of this matter submitted on demurrer, is this: That in 1917 a general contract of hiring was entered into with this plaintiff, and in pursuance of that general con-

(Testimony of Charles T. Early.)

tract of hiring, each and every paragraph, which is really in a manner a separate transaction, not related one to the other—they are all based upon the direct allegation in the complaint that each of these were performed in accordance with the general contract of hiring in 1917.

COURT.—Is that the theory of the complaint, Mr. Wilbur?

Mr. WILBUR.—We have alleged that in 1917 there was a general contract of hiring by Mr. Early, and, as stated by Mr. Senn yesterday, they had this property and Mr. Bates was more familiar with it than any one else, and there was a general contract of hiring at that time; that they would want his services from time to time upon that matter and would pay him [152] for the services what they were reasonably worth. If there is any question about that, we would of course want to follow it up with Mr. Bates to show the hiring and I will ask leave to ask this witness this question:

Q. I will ask you whether or not, Mr. Early, you had any contract of hiring with Mr. Bates in 1917, and if so whether it was written or oral.

Mr. DEVINE.—Just a moment, object to the first portion of it as being entirely a conclusion as to whether he had a contract of hiring.

Mr. WILBUR.—That is a question to be answered yes or no.

COURT.—He can answer the question.

Q. Yes, or no, whether you did have a general contract of hiring? A. Yes.

(Testimony of Charles T. Early.)

Mr. DEVINE.—Save an exception.

Q. Was that written or oral? A. Oral.

Q. Will you state what that contract was in 1917, along in August, or something of that kind it is alleged, if that was the date, whenever it is shown. What was the contract, or the terms thereof?

Mr. DEVINE.—Object to that first on the ground that there is no showing at all that this witness had any authority whatsoever to make such a contract of hiring. Second upon the ground that this is a single cause of action, and if he had such a contract and it was oral, it goes to the proposition that it was not in writing, because it has to deal with the disposition of lands and timber.

Mr. WILBUR.—That question has been ruled upon by Judge Wolverton adversely to counsel.

Objection overruled, exception saved.

A. I think I did explain that the first was in connection with the McCormick transaction. [153]

Q. In connection with what?

A. The McCormick transaction, and it was drawn out much longer than I ever anticipated it would be, that is it developed into many more transactions than we figured there would be in the beginning. I would say in that connection that it was my recommendation that the Portland & Southwestern Railway be bought; also that the McCormick Mill be bought, and the development made in an entirely different way than it was made.

(Testimony of Charles T. Early.)

Q. Now, when did you have your first talk with Mr. Bates? At what time in 1917 on this question?

A. Oh, I couldn't give you the date. It was very soon after the transaction was closed. I think it was closed on the first of July, 1917.

Q. You think it was about the first of July, 1917?

A. Yes, that is when the money was paid over and the property taken over by Mr. Early and his associates.

Q. What was the nature of the contract? Was there or was there not a general contract of hiring at that time? I want to get your idea as to what that contract was, in figuring for his services.

Mr. DEVINE.—I object to that portion of that question—was or was there not a general contract of hiring.

COURT.—Counsel modified the question.

A. In my opinion there was a general contract. The agreement was that he was to—his expenses were to be paid, and he would be properly compensated for his time. There was no understood—nothing understood as to whether it would be five dollars or twenty-five dollars a day.

Q. For anything that you might ask him to do?

A. Yes, in connection with the development of that property. It [154] was a big proposition and needed the utmost care and attention and I was particularly busy and Mr. Eccles was even busier than I.

Mr. WILBUR.—I think, if your Honor please, that testimony is sufficient. We are going to fol-

(Testimony of Charles T. Early.)

low that up with other testimony on the question of this contract.

COURT.—It can't be determined on testimony of one witness.

Cross-examination.

(Questions by Mr. DEVINE.)

Mr. Early, where did this conversation take place in 1917, and in whose presence, if any person, with reference to this general contract of hiring?

A. I think it was in my office in the Northwestern Bank Building.

Q. How long was that after the organization of the Oregon-American Lumber Company?

A. I don't recall when it was organized.

Q. With what officers or with whom did you discuss this plan of development that embodied the hiring of Mr. Bates in 1917, for all of these transactions which you have testified to?

A. No other officer, I think, except Mr. Eccles, until late in 1920. Then I discussed it with not only yourself, but all the other members of the Board.

Q. Was I a member of the Board in 1920?

A. I don't know. You had more to say than anybody else about policy.

Q. Was I an officer of the corporation at any time at all so far as you know?

A. No, I don't know as you were, but you were general manager for the Eccles interests.

Q. When you had this discussion then, with Mr.

(Testimony of Charles T. Early.)

Paul C. Bates, here in Portland, Oregon, in 1917, state if you will just what you said [155] to Mr. Bates about this employment.

A. I told him that we wanted to find the most practical way to develop the property, and there were various railroads leading towards it, and we either wanted to buy a road or build one, and my thought was to combine our timber with other timber and purchase a road that was already constructed, and extend it on to this timber.

Q. What else was said, now, aside from that about his contract of employment?

A. Well, it wasn't a very lengthy drawn out discussion. It wasn't necessary. He was simply told to go ahead and make these investigations from time to time, and that he would be paid for his time and his expenses.

Q. You say he was simply told. I am asking you to recite as nearly as you can the conversation. You stated the first portion of it being your theory; what did Mr. Bates then say to you?

A. What did Mr. Bates say to me?

Q. Yes.

A. Very well, he would be very glad to assist in any way that he could.

Q. What else, if anything, was said with reference to the scope of that employment that you were then making? A. Nothing.

Q. Nothing else at all? A. No.

Q. What expenditures of money did you then

(Testimony of Charles T. Early.)

and there authorize him to make for the Oregon-American Lumber Company?

A. I authorized him to make an indefinite amount.

Q. An indefinite amount? A. Absolutely.

Q. Up to the full amount of the capitalization of the corporation?

A. Oh, no. I knew Mr. Bates and knew that he was reliable; he wouldn't overcharge and I had the utmost confidence in him.

Q. Did you at that time state to Mr. Bates what your authority was [156] to make this arrangement? A. I think not.

Q. Did you at that time state to Mr. Bates what your position with the company was?

A. It wasn't necessary. Mr. Bates knew all about it.

Q. So there was nothing said in the conversation, in this general employment, with reference to your position with the company at all? A. I think not.

Q. Did you at that time, Mr. Early, have any meeting with the directors of the company, in which you were given authority to make such a contract of employment?

A. I had had no meeting with the Board.

Q. Did you at that time, or prior to the time that you have mentioned in 1920, and the fall of that year, ever have any meeting with the Board in which the Board took any action authorizing you to make this employment, or any employment?

A. I have already testified that I did not.

(Testimony of Charles T. Early.)

Q. That you did not?

A. Never attended a meeting prior to that.

Q. Now did you in 1917 occupy a position with the company in which you reported to the Board of Directors at any time? A. Prior to 1917?

Q. No, in 1917.

A. With the Oregon Lumber Company, yes.

Q. I am not talking about the Oregon Lumber Company. We are talking about the Oregon-American Lumber Company.

A. I can say to you that this timber was bought for the Oregon Lumber Company in the first place.

Q. I am not asking you that, Mr. Early. Will you answer my question: Did you at any time in 1917 make any report of your activity as to hiring Mr. Bates or any other person to the Board of Directors of the Oregon-American Lumber Company? A. No, sir; I think not.

Q. Did you in 1918? A. I think not. [157]

Q. Did you in 1919? A. I think not.

Q. Did you in 1920? A. Yes.

Q. And what form did that report take?

A. It was just simply a verbal report when I was instructed to dispose of the property.

Q. Now, that was late in 1920 as I understood you? A. Yes.

Q. So from the beginning of this employment in 1917 down to 1920, late in 1920, you at no time ever directly or indirectly, or by writing made any report to the Board of Directors of the Oregon-American

(Testimony of Charles T. Early.)

can Lumber Company of any of the previous transactions that you have testified to here?

A. No, sir; I reported to the president.

Q. And as far as you personally are informed, you don't know whether the president of the corporation ever repeated, through writing or orally, any statements made by you in the so-called reports to the president, to his Board of Directors?

A. No, I don't know.

Q. During the entire time, Mr. Early, what salary were you placed upon by the Board of Directors of the Oregon-American Lumber Company?

A. I drew my salary from the Oregon Lumber Company and the Mount Hood Railway Company; I don't think I drew any from the Oregon-American.

Q. There was no salary drawn from the Oregon-American Lumber Company by you? A. No, sir.

Q. You were never on its payroll?

A. I think not.

Q. And at the time that you said, in 1917, that you made this general contract with Mr. Bates, you have now said to the Court, I take it, as nearly as you can recall, all that was said with reference to that employment? A. Yes, sir.

Q. Was there anything said in that employment of selling the stock of the stockholders to the Central Coal & Coke Company of [158] Kansas City, Missouri, in 1917? A. No, sir.

Q. Was there anything said in that contract at

(Testimony of Charles T. Early.)

that time with reference to selling the tract of timber to Mr. Kerry and his interests?

A. No, Mr. Devine. I testified that that came up very much later.

Q. It wasn't even in your contemplation of mind at the time you talked to Mr. Bates in 1917, was it?

A. Couldn't have been, no, sir.

Q. Neither was the Central Coal & Coke Company transaction in any contemplation of mind at the time you talked to Mr. Bates?

A. I don't know as I ever heard of the Central Coal & Coke Company at that time.

Q. Was the deal with the Mitsui Company you spoke of in your contemplation of mind at the time you talked to Mr. Bates?

A. Yes, that was very soon afterward, as I remember.

Q. Was it in your mind at the time you made this general contract of employment in 1917?

A. What was in my mind was to do whatever was necessary at the time.

Q. Answer my question. Was that in mind? Did you have that deal in mind at that time?

A. No, I couldn't have it in mind because I never knew it was going to come up.

Q. Did you have in contemplation of mind at the time you made this so-called general contract of hire in 1917, any idea that you were going to offer any standing timber or acreage of the Oregon-American tract for sale?

(Testimony of Charles T. Early.)

A. Yes, I thought that we might offer this next to the Wheeler.

Q. That was your judgment at that time?

A. That was my judgment because I had discussed it with the president, and he didn't want to buy that timber when he bought it, and we always figured that it would sooner or later be sold.

Q. What relationship did you have, Mr. Early, to this purchase of this timber by the Oregon-American Lumber Company in 1917? [159]

A. What did I have?

Q. Yes.

A. I was instructed repeatedly by the Board of Directors to find a billion feet of good fir timber. I looked over British Columbia—

Q. Board of Directors of what company?

A. The Oregon Lumber Company for whom the timber was first bought.

Q. What relationship did you have to Mr. Bates in 1917, at the time this timber was bought?

A. I had the same arrangement with Mr. Bates then that I had later.

Q. Who did Mr. Bates represent in 1917, when the timber was bought, as far as you understood the situation?

A. He represented Mr. DuBois and Mr. Eccles.

Q. In representing Mr. DuBois, he was representing Mr. DuBois as agent to sell this timber, wasn't he? A. Yes.

Q. What relationship did you have with reference to the commissions that were paid by Mr. DuBois

(Testimony of Charles T. Early.)

or by Mr. Eccles to Mr. Bates in the purchase of this timber in 1917? A. I didn't have any.

Mr. WILBUR.—Objected to as incompetent, irrelevant and immaterial. That has to do with the DuBois transaction which was the transaction beforehand.

COURT.—I understand that but I think he can answer.

Q. You may answer, Mr. Early.

A. I answered.

Q. What did you say?

A. I said I didn't have any.

Q. Did you receive any commission from Bates on that transaction?

Mr. WILBUR.—Same objection.

COURT.—Same ruling.

A. What is the question.

Q. (Read.) A. I did.

Q. How much?

A. I think \$17,000. Now, just a moment—

Q. I will ask the question.

A. That is all right. I am going to answer this one. I want [160] to say to the jury—

Q. Just a moment. If the Court please, I think he may answer my question.

COURT.—He may explain.

Mr. WILBUR.—He can explain. We will explain pretty well before we get through with it. Go ahead.

A. I will say that when Mr. Bates first suggested to me that he give me a part of the commission, it

(Testimony of Charles T. Early.)

was after the contract was closed, and we never had any *any* understanding prior thereto. I said that I would first have to ask Mr. Eccles about it, that I wouldn't take it without his permission. I talked to the president and told him what Mr. Bates had suggested, and he said it was perfectly all right, "If he wants to give you all his commission, why go ahead and take it. You work hard and it is all right with me," and I think Mr. Eccles will testify to that before this case is over. There is nothing to conceal about the commission; I am not ashamed of it, and it was perfectly regular in every way.

Q. Did you ever make a report of that to the Board of Directors of the Oregon-American Lumber Company? A. No, I did not, because I—

Q. Did you ever make a report of that to the Board of Directors of the Oregon Lumber Company?

A. No, sir, but they knew about it.

Q. Now, coming down to the transaction with Mr. Bates in September, or in July, 1917, when this so-called general contract that you have spoken of was entered into, what if anything was said by you, or by Mr. Bates, with reference to the division of any commissions that might result from the handling of this property?

A. Never was a discussion on any deal. We never had any understanding.

Q. Beg your pardon?

(Testimony of Charles T. Early.)

A. We never had any understanding with respect to commissions. [161]

Q. You are not now employed by either the Oregon-American Lumber Company, the defendant here, or the Oregon Lumber Company which you spoke of as the Eccles company, or by any of its railroad companies, are you. A. No, sir.

Q. When did your relationship of officer or employee of either of these companies terminate?

A. Well, it was terminated at different times. I tendered my resignation August 25, 1921. It was accepted thirty or sixty days later.

Q. Was that prior to the bringing of this action, as you understand it?

A. I don't know when the action was brought.

Q. You don't know when the action was brought?

A. No, I don't.

Q. When did you first learn that Mr. Bates had performed a service for the Oregon-American Lumber Company with reference to the Central Coal & Coke Company transaction?

A. After I was at Ogden and came back by way of San Francisco at your request, and came on to Portland, it was within a very few days of that time. I think it was in November.

JUROR.—What year? A. 1920.

Q. Do you recall of having had a discussion in 1921 along about the month of September, with Mr. David C. Eccles, Mr. Charles S. Keith, President of the Central Coal & Coke Company, and myself, with reference to the sale of the properties of the Oregon-

(Testimony of Charles T. Early.)

American Lumber Company, in your office in the Yeon Building, in this city?

A. Yes, sir; indeed I do.

Q. Did you at that time state to Mr. Keith and to the other men including myself there present, that Mr. Paul C. Bates had absolutely no connection with this company?

A. No, sir, I made no such statement.

Q. Are you confident of that? A. Yes, sir.

Q. Isn't it a fact—let me refresh your recollection—isn't it fact that you received a letter about that time from a man at [162] Seattle, Washington, by the name of Beckman, alleging that he was the instigator or agent or broker that brought Mr. Keith's purchase of the stock interest in this company about, and that he was entitled to a commission. Do you recall that?

A. Yes, I recall a letter from Mr. Beckman, and he also called at the office, and I would say in that connection—

Q. Just answer my question.

A. I am going to answer.

Mr. WILBUR.—I think he is entitled to answer.

COURT.—You have answered the question and that is all that is required.

Mr. WILBUR.—May the witness make an explanation?

COURT.—No, he has answered the question. Why go on with some personal matter wholly foreign to the question asked?

Q. I will ask you if at that time, at the time

(Testimony of Charles T. Early.)

this conversation you refer took place, if you then did not dictate a letter to Mr. Keith, in substance stating that Mr. Paul C. Bates, who was referred to in the Beckman correspondence to you, had absolutely no connection with the sale of any of the properties, and particularly with the sale of the stock to the Central Coal & Coke Company by the Oregon-American Lumber Company?

Mr. WILBUR.—May it please your Honor, I think the witness has a right under the statute to see the letter if they have such a letter.

A. I think I can answer that.

COURT.—He asked if you dictated such a letter.

A. I dictated a letter to Mr. Keith and I didn't think Mr. Bates could come in for commission on account of the fact that I knew that Mr. Eccles had had the matter up with Mr. Keith a long time prior, but I didn't correctly understand it for the reason that Mr. Eccles was negotiating for a stock sale, that is to interest him for a million dollars worth of stock, and at that time the sale of the property never was under consideration. In fact the sale of the property, as you well know, never was authorized [163] until late in October, 1920.

Q. You do remember, then, I take, of having dictated and signed such a letter as I speak of?

A. I wrote Mr. Keith. I told him I didn't think there would be any trouble about any commission with Mr. Bates.

Q. I hand you what purports to be a copy of a letter, Defendant's Identification A, written about

(Testimony of Charles T. Early.)

that time, purporting to have been written by you to Mr. Beckman, and will ask you if you recall having dictated a letter of which this is a counterpart, and placed it in the United States mail addressed to Mr. Beckman at Seattle.

A. Yes, I think that letter was written at the request of yourself and Mr. Keith, because your idea at that time was to evade paying commission by selling the stock rather than selling timber.

Q. Now, Mr. Early, since you made that statement, you mean to state to this Court and jury that the facts that you state in this letter to Mr. Beckman over your signature were not the truth?

A. I don't see anything untrue in the letter. The stockholders sold out, at least a certain percentage of them, and that is what the letter states.

Q. Then it is the truth as far as you know, and this copy of the statements of fact made by you, as of the date that this carbon copy bears, with reference to Mr. Beckman and Mr. Paul C. Bates' claim is true?

A. Yes. The purpose of the letter, however, was to eliminate anybody from any commission.

Q. If it is true and a fact, the purpose of it has nothing to do with it; it is a fact, is it?

A. If we eliminate it, it is all right with me.

Mr. DEVINE.—I would like to introduce the letter.

Mr. WILBUR.—I don't have any objection. It is certainly [164] not binding upon Mr. Bates—

(Testimony of Charles T. Early.)

with the understanding it is not a letter binding upon Mr. Bates.

Letter offered in evidence and marked Defendant's Exhibit "A" and read as follows:

Defendant's Exhibit "A."

September 16, 1921.

Mr. Victor H. Beckman,
517 Eighteenth Ave. N.
Seattle, Washington.

Dear Sir:

Replying to your favor of the 6th, the Oregon-American Lumber Company has not disposed of its timber holdings to anyone. The Central Coal & Coke Company acquired the stockholding interests of some of the stockholders of the Oregon-American Lumber Company.

Mr. Keith denies that he was your customer or that you interested him in the property. The Oregon-American Lumber Company gave to neither Mr. Bates nor anyone else the right to offer its property to the Central Coal & Coke Company, or to offer for sale the stock of its stockholders.

Yours very truly,

OREGON-AMERICAN LUMBER COMPANY.

CTE:D

By _____.

Q. CTE are your initials, are they not?

A. Yes, sir.

Q. Now, Mr. Early, did you understand that Mr. Paul C. Bates was in the employ of the Oregon-

(Testimony of Charles T. Early.)

American Lumber Company in October, November and December of 1920?

A. I did, most emphatically.

Q. You did? A. Yes, sir.

Q. When did you reach that understanding? That is when did that state of mind become known to you? A. In Ogden, Utah, at your meeting.

Q. Then why, in 1921, did you state that Mr. Bates had no connection with the sale of this property? [165]

A. That was written at the request of yourself and Mr. Keith.

Q. I understand, but regardless of whose request it was written at, it is the truth and the facts?

A. As far as I know.

Q. That is your explanation of your understanding in 1920, and your statement in 1921?

A. Yes, sir.

Q. Now coming to the 1920 transaction, during the time that Mr. Bates, as you understand it then, was under this general employment with the Oregon-American Lumber Company, he at the same time negotiated a deal for the Inman-Poulsen Lumber Company, and at that time represented the purchaser rather than the Oregon-American Lumber Company, didn't he?

A. Yes, he represented the purchaser.

Q. And your dealings, if any you had in 1920, with reference to the Inman-Poulsen deal, were with Mr. Bates at arms length as the representative of the Inman-Poulsen Lumber Company?

(Testimony of Charles T. Early.)

A. There is only this difference between the transactions in 1920 or after that, Mr. Devine. After this meeting in Ogden when I went to San Francisco, I 'phoned Mr. Bates and told him to do everything possible to interest people that would likely be in the market for timber.

Q. That may be interesting, Mr. Early, but it is not answering my question. I prefer that you answer my question.

A. Well, I am endeavoring to answer.

Q. Mr. Bates in the entire Inman-Poulsen deal represented the Inman-Poulsen people, and not the Oregon-American. Isn't that correct?

A. Yes, I think that is correct.

Q. And he received a commission on the sale of the property of the Oregon-American Lumber Company from the Inman-Poulsen Lumber Company, didn't he? A. We sold it net.

Q. Well, you know?

A. It was my understanding.

Q. And you know his commission was paid by the buyer? A. Yes, sir. [166]

Q. And in that particular transaction he acted in the capacity of lumber or timberland broker, didn't he?

Mr. SENN.—That is a conclusion.

COURT.—State what capacity he acted in.

Q. Explain how you understood it.

A. Well, if the deal had not been made the company would have been obligated to pay him for his time.

(Testimony of Charles T. Early.)

Q. That is not my question. Will you please answer the question, Mr. Early.

A. That is the best answer I can give.

Q. You understood that he acted in the capacity, in that deal, of a broker representing the purchaser, and claiming commission for his representation in that particular, didn't you?

A. He found a buyer at my request, made over the phone from San Francisco, yes, sir.

Q. Were you present in the office of the Oregon Lumber Company which I understand was a common office used by the Oregon-American Lumber Company, in 1921, during the time that the representative of Price, Waterhouse & Company, Accountants, made an audit of the Oregon-American Lumber Company? A. Yes, sir; I was.

Q. Is it not a fact, Mr. Early, that at that time you were solicited for any information that you might have by the representative of Price, Waterhouse Company, with reference to any known obligations owing by the Oregon-American Lumber Company, whether in the form of accounts stated, or contingent obligations?

A. No, sir, I don't think that is a fact.

Q. You don't think that is a fact? A. No, sir.

Q. Isn't it a fact that you made a written statement to Price, Waterhouse & Company's representative, that other than the accounts upon the books of the company you knew of no obligations of the company, either direct or contingent, in May, 1921?

A. I don't have any recollection of ever having done so.

(Testimony of Charles T. Early.)

Q. Would you say you did not? [167]

A. My best judgment is that I did not. They asked me about various accounts, but a broad statement like that I don't think was made.

Q. Did you state to the representative of Price, Waterhouse & Company at that time, when they were seeking to find out the financial condition of the Oregon-American Lumber Company, that you say you were making these contracts of hiring for, —did you state to them at that time that you had employed Mr. Bates and that he had rendered services upon the many items that you have testified to here, between 1917 and May, 1921?

A. No, sir; the auditors bothered me very little. They asked me very few questions.

Q. You understood at that time, though, that the effort that was being put forth in the making of that audit, was to ascertain all the obligations of the Oregon-American Lumber Company, didn't you?

A. I supposed that was it but I wasn't consulted. I didn't hire them, and didn't know anything about the instructions.

Q. And knowing, however, that that was the effort that was being put forth in hiring these auditors, and while they were working in the office you occupied during that period, I take it, of approximately sixty days—were they not?

A. I don't remember, probably that is right.

Q. You made no statement to them that all of these vast sums of money that you had contracted

(Testimony of Charles T. Early.)

for were obligations outstanding of the Oregon-American Lumber Company?

A. They never asked my opinion, never asked me any questions that I didn't answer to the fullest of my ability.

Q. Going now to the Kerry transaction: Who did you discuss that with at the outset, in that transaction as a representative of the Kerry interests? And now, Mr. Early, I mean by that, was there some Frick Logging Company or Kerry Logging Company may have been involved—I am speaking of them generally, so you get my idea, as the Kerry interests. [168]

A. The first talk that I had with anyone about this property I think was with Mr. Kerry himself. I told him that it was not for sale, it being my understanding that nothing would be sold that would go out over any other road except the P. A. & P. Railroad.

Q. That was your understanding at what period of time, Mr. Early?

A. Well, I couldn't give you—that would be in 1920, I think.

Q. In 1920. A. Early in 1920.

Q. So that from the beginning of this corporation's effort in 1917, about July, 1917, down to some time—a date fixed by conversation you had with Mr. Kerry—you were under the impression that no business would be transacted by the Oregon-American Lumber Company as far as the sale of

(Testimony of Charles T. Early.)

any of its lumber was concerned, that wouldn't come out over the P. A. & P. Railroad?

A. No, that isn't exactly true, Mr. Devine—in that territory, but not in the Wheeler territory.

Q. In 1920 isn't it a fact that the first proposition that came to the Oregon-American Lumber Company, as far as you were informed, came as an authorization of the Board of Directors directing myself as attorney in fact, and I turned that over to you, giving you a copy of the resolution adopted by the Board of Directors, to make disposition to Kerry of certain then called northern or fringe timber?

A. I never saw any resolution of the Board of Directors, and that didn't come to me that way at all.

Q. Isn't it a fact that Mr. Porter, E. L. Porter, of Portland, Oregon, who was a logger carrying on a logging operation on the so-called Kerry road, being on a tract of timber lying to the north of the Oregon-American tract, went to Mr. Paul C. Bates with the purpose of ascertaining what timber offerings he had, and that Mr. Porter wrote a letter to Mr. Bates, which Mr. Bates delivered to you, authorizing Mr. Bates as agent for Mr. Porter to make an [169] offer to the Oregon-American Lumber Company for a certain percentage of its timber?

A. That is substantially correct, yes.

Recess until two o'clock.

Thursday, April 3, 1923, 2 P. M.

C. T. EARLY resumes the stand.

Cross-examination (continued).

(Questions by Mr. DEVINE.)

As a part of the cross-examination of this witness I desire at this time under the stipulation under which this exhibit was admitted, which is a file of the corporation records, to read to the jury the power of attorney referred to as running from the corporation to Charles T. Early.

Reads as follows:

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That the Oregon-American Lumber Company is a corporation duly organized under and by virtue of the laws of the State of Utah; having its principal place of business in the City of Portland, County of Multnomah, and State of Oregon.

That the said Oregon-American Lumber Company has made, constituted and appointed, and does hereby make, constitute and appoint Charles T. Early, a citizen of the United States and a citizen and resident of the State of Oregon, its true and lawful attorney in fact, and authorized agent for it, and in its name, place and stead to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon, or the United States Courts therein, and upon whom all lawful writs, processes and summonses may be served with the same effect as though the company existed

(Testimony of Charles T. Early.)

in the State of Oregon, requisite and necessary [170] to give competent and complete jurisdiction of the said Oregon-American Lumber Company to any of the said courts giving and granting unto the said Charles T. Early full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the said Oregon-American Lumber Company might or could do if personally present, hereby ratifying and confirming all that said Charles T. Early shall lawfully do or cause to be done by authority thereof.

This power of attorney is irrevocable except by the substitution of another qualified person for the one hereby appointed attorney in fact.

IN WITNESS WHEREOF, said corporation, in pursuance of a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be hereto affixed the 20th day of June, A. D. 1917.

OREGON-AMERICAN LUMBER COMPANY.

By DAVID C. ECCLES, (Seal)
President.

[Seal] By ROYAL ECCLES, (Seal)
Secretary.

Q. Mr. Early, I hand you here what has been marked as Defendant's Identification "B," which purports to be a copy of a letter addressed to Mr. Paul C. Bates, written by you, and will ask you

(Testimony of Charles T. Early.)

whether or not you have a recollection of having written such a letter and filed that copy as a counterpart thereof in the files of the company.

A. Yes, I remember that letter.

Q. Under the date, I take it, that that carbon copy bears? A. Undoubtedly.

Mr. DEVINE.—I desire to offer this carbon copy in evidence.

Received without objection and marked Defendant's Exhibit "B" and read as follows: [171]

Defendant's Exhibit "B."

January 11, 1921.

Mr. Paul C. Bates,
Yeon Building,
City.

Dear Bates:

Referring to recent conversation with respect to the sale of timber at or near Cochrans to the Wheeler people, will say that it is understood that if these negotiations are closed that you are protected on your commission.

This already stated to you personally, but we have no hesitancy in putting the matter in writing.

Yours very truly,

OREGON-AMERICAN LUMBER COMPANY.

By _____.

CTE:AF.

Q. Mr. Early, by what other name is this transaction referred to in this letter known and referred

(Testimony of Charles T. Early.)

to by counsel in his questioning of you this forenoon on your direct examination?

A. It is in connection with the Lausman-Wheeler transaction.

Q. How did it come that if Mr. Bates was under a general contract of employment, that you were at the same time assuring him that his commission would be paid?

A. I endeavored to tell you before noon that there was a different arrangement made after the meeting at Ogden.

Q. In other words, these transactions did not come under, as I understand it, the general contract of hiring that you spoke of as having taken place in 1907.

A. No, he had a guaranty whether we made the sale, or whether we didn't, but it would be the same thing except I impressed upon him the importance of crowding these sales faster after we found out the financial condition the company was in.

Q. Mr. Early, this transaction, this Lausman-Wheeler transaction, [172] was a commission proposition, to the effect that if Mr. Bates succeeded in interesting the Lausman-Wheeler people in the sale of this property, as a timber broker, he would receive a commission for it. Is that correct?

A. For any transaction closed we had a definite understanding as to what it was to be, and it was submitted latterly to you people in Ogden as you well know.

Q. Answer my question now.

(Testimony of Charles T. Early.)

A. That is the best I can.

Q. He was to receive a commission as you understood it? A. On that sale, yes.

Q. So that was a contract separate and apart and independent of this contract, the terms of which you detailed as taking place in 1917?

A. I don't know whether you would consider it as separate and apart or not.

Q. Did the contract of 1917 that you detailed here this forenoon on the witness-stand, have anything at all about commission in it? A. No, sir.

Q. So this transaction here, this Lausman-Wheeler transaction, never was consummated, was it? A. No, sir.

Q. So there never was any commission earned, was there?

A. Wouldn't be commission in it; would be compensation, though.

Q. Never were any commissions earned at any time? A. No, sir.

Q. And you were in this letter attempting to assure him that commissions would be paid?

A. Yes, sir, if the sale went through.

Q. And that was a different agreement from what you had in 1917? A. Originally, yes.

Q. Assuming, Mr. Early, that if the commission in the Lausman-Wheeler transaction had been earned, what then would your understanding have been with reference to Mr. Bates being entitled to his earnings and his daily per diem? [173]

(Testimony of Charles T. Early.)

Mr. WILBUR.—May it please your Honor, I don't think we care particularly about this, but I object to it, because, as I understand the situation, the Lausman-Wheeler transaction that they are referring to is not a part of the transaction upon which we are suing. That is my understanding, is not that correct?

Mr. SENN.—We are not claiming anything in the Lausman transaction.

Mr. DEVINE.—It is one of the transactions I asked Mr. Early about with reference to his testimony this forenoon, and he said yes, and in relation to the sale that involved the southern portion of the tract, isn't it, Mr. Early?

A. Yes, but I don't think it is anywhere in this case.

Q. Did you, at any time, Mr. Early, make any contracts in writing for the Oregon-American Lumber Company with Mr. Bates?

A. No, any contracts would be merely letters.

Q. Would be merely letters? A. Yes, sir.

Q. Isn't it a fact, Mr. Early, that prior to your meeting with the Board of Directors, at Ogden, Utah, on or about the month of October, 1920, that you at no time prior to that ever reported to any person other than David C. Eccles, as you said here, as to any financial or general contracts, or any operations with respect to this property?

A. That is true. I testified to that this morning. It was only latterly that I took it up with you people in Ogden, to make any reports.

(Testimony of Charles T. Early.)

Q. You then were requested to come into Ogden by the Oregon Lumber Company, were you not?

A. I don't know; I don't so understand it.

Q. Isn't it a fact that in August, 1920, you as an officer and director of the Oregon Lumber Company met with its Board of Directors at Ogden, Utah? I am asking you about this to fix your [174] mind as to the dates.

A. That is perhaps true. I met with them that year, yes.

Q. Isn't it a fact that at that meeting of the Board of Directors in Ogden, Utah, of the Oregon Lumber Company, the Board of Directors asked you whether or not you had been giving any time or attention to the affairs of the Oregon-American Lumber Company, or acting in any capacity as an officer of that company on the salary that was being paid you by the Oregon Lumber Company, and isn't it true that in response to that you said to that Board of Directors at that time and session that it was absolutely untrue, that you had nothing to do with the affairs of the Oregon-American Lumber Company?

A. I don't think I ever made any such statement.

Q. Would you say you did not? A. Yes.

Q. Do you recall having discussed that subject?

A. No, I do not. It might have been discussed but I have no recollection.

Q. You have no recollection. Isn't it a fact that at that time you said that the only reason why the Board of Directors of the Oregon Lumber Company

(Testimony of Charles T. Early.)

may have conceived the idea that you were devoting some time to the Oregon-American Lumber Company was because it happened to have offices in the same building in Portland, Oregon?

A. No, I think not.

Q. Now, the man you spoke of this morning as being the tax agent of the Oregon-American Lumber Company, was a man that was employed by the Oregon Lumber Company as a tax agent, was he not?

A. He was employed here for the various companies.

Q. He simply acted in his capacity as tax agent for the Oregon-American Lumber Company under the previous employment he had?

A. No, sir, he was paid additional compensation.

Q. You never had any authority from the stockholders of this [175] company, directly or indirectly, except as came through myself, in December, 1920, to sell the entire tract of timber, did you?

A. No, sir. It never decided to sell it until I think October.

Q. Isn't it a fact that in November, 1920, you wrote a letter to Mr. Paul C. Bates stating to him at that time that you had no authority whatsoever to make any offerings of the standing timber of the Oregon-American Lumber Company, in person and that further than that the Oregon-American Lumber Company were not disposed to sell any stand-

(Testimony of Charles T. Early.)

ing timber, but on the contrary were in the market to buy additional timber?

A. I might have. Might have been at your request, the same as the telegram was, to withdraw the price of three dollars, as that was not enough.

Q. Isn't it likewise a fact that after Mr. Porter interviewed you, or Mr. Bates interviewed you as the representative of Mr. Porter, with a letter signed by Mr. Porter, which he delivered to you, for his authority to call on you—isn't it a fact that at that time or subsequent thereto Mr. Kerry called at the office that you were occupying?

A. Surely.

Q. Isn't it a fact that at that time you made statements to Mr. Kerry that you had no authority to sell any timber land of the Oregon-American Lumber Company, and that if any such timber lands were disposed of any proposition of that kind must be submitted to the Board of Directors at Ogden, Utah?

A. No, I didn't make a statement of that kind to Mr. Kerry. I told him as to this particular piece of timber I didn't think it was for sale, for the reason as I told you this forenoon, that it would come out over another road, and the main thing was to hold the timber for the P. A. & P. Tonnage. That was the road that you were building.

Q. Did you have any authorization of the Oregon-American Lumber Company to expend any money at any time in the purchase of [176] railroads that you discussed this morning?

(Testimony of Charles T. Early.)

A. No. I was simply getting prices and reporting to the president. I wasn't buying railroads. I was recommending properties that I thought it would be advantageous to acquire in connection with the development of this property.

Q. You didn't feel that you had any authority to do that yourself, did you, Mr. Early?

A. To buy them?

Q. Yes. A. No, sir.

Q. You didn't think that you could go out and negotiate and close any deal for properties for this company, at any time, did you?

A. Certain properties, yes, I would say, in answer to that, Mr. Devine, that I never did anything that was questioned by my people during the thirty-three years that I was with them. In other words, they never had to repudiate anything that I did.

Q. Answer my question, Mr. Early. You never, did you, for the Oregon-American Lumber Company, assumed to attempt to sell any of its properties without at least put it up to the president, as you said, or the Board of Directors?

A. Oh, no, certainly not.

Q. And didn't have it?

A. I never done business that way.

Q. I hand you what has been marked Defendant's Identification "C," and will ask you if you recognize that as a copy of a telegram sent by you to David C. Eccles, the then president of the Oregon-American Lumber Company? A. Yes, sir.

(Testimony of Charles T. Early.)

Q. The original of that was signed by you and placed in the telegraph office for sending, was it, and transmitted? A. Undoubtedly.

Telegram offered in evidence, received without objection, and marked Defendant's Exhibit "C," and read as follows:

Defendant's Exhibit "C."

WESTERN UNION TELEGRAM.

(Copy)

Portland, Oregon, November 18, 1920. [177]

David C. Eccles,

Care Oregon Lbr. Co.,

Lbr. Exch. Bldg., Chicago, Ill.

Made Bates counter proposition three fifty per thousand and at conference yesterday developed Kerry backing proposed buyer and insisted that timber move over their line when I stated that it would not be sold at price made except that it move out over the P. A. & P. line and if this is not in line with your wishes wire quick stop I am of the opinion that they would yet try to reduce that price to three twenty five but not below that I made them understand a definite proposition three fifty basis.

C. T. EARLY.

Q. Now, when you sent that telegram that was at the time that these negotiations were being carried on with Kerry, was it not?

(Testimony of Charles T. Early.)

A. It was the Kerry transaction. I don't know whether it was Porter at that time, or whether it—Mr. Porter, I think, was carrying on the negotiations.

Q. And you afterwards learned that Mr. Porter's negotiations were on behalf of Kerry, didn't you?

A. Yes.

Q. So whether Porter or Kerry, you understand I am referring to the one transaction?

A. Yes, amounted to the same thing.

Q. Mr. Early, how is it you said this forenoon, in answer to counsel's question here, that you hired Mr. Bates to make this Kerry deal, and in your telegram to the president of this Company on November 18, 1920, which I have just read, you said that you made the proposition on behalf of the company to Bates for the other people? How do you reconcile these two statements?

A. Well, my arrangement with Mr. Bates was to develop any sources that it was possible for him to develop, and I didn't know whether it would be Smith, Brown, Jones or Kerry. That was under the other arrangement when the proposition came up definitely before you. [178]

Q. Now, Mr. Early, isn't it a fact that Mr. Bates came to you and presented a letter authorizing him to do business for Mr. Porter?

A. Yes, Mr. Bates got that—

Q. And at the time this transaction was going on you regarded that Bates, standing on one side, was endeavoring to make the best deal possible against

(Testimony of Charles T. Early.)

your company, the Oregon-American Lumber Company, wasn't he?

A. Not in that deal. I understood that he was to submit whatever offer they had to make, and he did.

Q. Why is it that you say here that you thought you could keep the price of this timber that was proposed to be sold up to three and a quarter when dealing with Bates? A. Why did I say that?

Q. Yes.

A. I knew it was worth that and I think Mr. Bates thought it was worth that, and if it hadn't been for your financial condition would have eventually got twice that.

Q. If Mr. Bates had accepted the proposition made on the date that you sent this wire, you would have closed the proposition, on the one hand, you speaking for the Oregon-American Lumber Company, and Mr. Paul C. Bates being the contracting party of the buyer, wouldn't you?

A. Oh, yes, we would have closed undoubtedly.

Q. Yet you want to tell this jury that knowing that Bates was working for Kerry, working for Porter, you expected to pay Bates at least \$43,000?

Mr. WILBUR.—I don't understand that witness said that he was working for Kerry.

A. I didn't. And I didn't mention \$43,000, either.

Mr. WILBUR.—I think that is an improper assumption on the part of counsel. I don't think there is any evidence here to justify that. [179]

(Testimony of Charles T. Early.)

COURT.—I think it is proper cross-examination.

Q. Now answer the question, Mr. Early, that I ask you—\$39,000—I may be in error.

A. Let's have the question.

Q. (Question read.) Continuing: or a commission amounting to fifteen cents a thousand?

Mr. WILBUR.—I object to that question for the reason that I consider it is based on an improper assumption that this witness has said that Mr. Bates was working for Mr. Kerry.

COURT.—I think it is proper cross-examination.

A. The price at which the timber would be sold would be—on that price would be dependent the amount of the commission, and you well know that when they were talking about a three dollar price in connection with this deal, that I wired you that even at that figure it would have to carry a commission of two and a half per cent to Mr. Bates. I got him to reduce his commission to that amount.

Q. But you expected—you mean to say that you expected that Mr. Bates, the official representative in this deal of Mr. Kerry and Mr. Porter—that you in addition to paying commission, expected to pay him a salary and his expenses?

A. If he had got the commission, he wouldn't have asked it.

Q. It doesn't make any difference what he would have asked. Did you expect to do that?

A. Wouldn't expect to pay twice; no sir.

Q. Now, then coming to the general contract of

(Testimony of Charles T. Early.)

hiring which you referred to in your examination this forenoon, covering this transaction, which would he have gotten under that general contract of hiring, his expenses and \$75.00 a day, or a commission?

A. That would have been definitely settled at that time.

Q. In other words unless it was definitely settled at that time your general contract of hiring would not have covered it, would it Mr. Early?

A. I should think it would; maybe it wouldn't.

Q. Did you disclose to your Board of Directors at that time that you knew that Mr. Bates was working for the other people, for the Kerry interests? [180]

A. That is a question, Mr. Devine, that you could answer better than I could. You knew what my instructions were after I attended the first board meeting.

Q. Now, Mr. Early, I am not being examined.

A. All right.

Q. I wish you would answer my question.

A. All right, I will answer it. You instructed me to go to San Francisco and see what I could do, and then to exhaust every resource to dispose of this property; that you had to do something; you had to have money. If you didn't get it, you were going to lose it. That is the basis that I went on. We were grabbing at straws every direction as you know.

Q. Now answer my question, will you? Did you

(Testimony of Charles T. Early.)

disclose to the Board of Directors in the Kerry transaction, that you knew that Paul C. Bates was representing the Kerry interests in this deal?

A. I should think my telegram would disclose it. If that wouldn't I don't know what would.

Q. Other than this telegram you have no recollection in reference to it?

A. Yes, Mr. Eccles knew about it. I have letters from him, I think.

Q. So that your Board of Directors, as far as you know, and Mr. Eccles, President of the company, as far as you know, both and all understood at the time this Kerry transaction was going on, that Mr. Paul C. Bates was the agent and employee of Mr. Kerry and his interests?

A. Mr. Porter, yes.

Q. And not the employee or agent in that sale, of the Oregon-American Lumber Company? You were doing that?

A. I was doing what I could, yes.

Q. And you so understood that?

A. Yes, sir, that I was to do what I could.

Q. Yet you understood that he was not the agent or employee of [181] the Oregon-American Lumber Company in that transaction?

A. I understood that Mr. Bates was to have pay for his services, regardless of whether he made a single deal or not.

Q. In other words you understood, as I gather now from your remark, that your company was

(Testimony of Charles T. Early.)

going to pay the agent and representative of Kerry whether the deal went through or not?

A. Yes, sir, that was in my telephone instructions from San Francisco, that Mr. Bates was to do what he could to dispose of this property, and that we would see that he was properly compensated.

Q. Did you disclose that to Mr. Kerry in the transaction which you had with him, that our company was going to pay to his agent or employee, a salary, whether Mr. Kerry dealt with them or not?

A. I never discussed it with Mr. Kerry but once, and that was the day that we closed.

Q. I take it that you mean by that answer that you didn't tell Mr. Kerry that you were paying his agent?

A. No, I didn't tell him anything about it.

Q. I believe you said this forenoon that on the Inman-Poulsen deal you understood that Mr. Bates was representing the Inman-Poulsen people?

A. Yes, sir.

Q. But he was still, as you understood it, even during that period of time, your employee?

A. I would say, yes.

Q. So that you were in this novel position then, during the time you were carrying on these negotiations, of having your employee of your company, endeavoring to get the best of the deal as against the interests of your company. Is that correct?

A. Not at all; no, sir.

Q. Did you disclose to the Inman-Poulsen people

(Testimony of Charles T. Early.)

at that time that Mr. Bates, their agent and representative in negotiating their deal, was being likewise feed by your company?

A. No, sir, we didn't pay him. [182]

Q. It is a fact, is it not, that throughout the Inman-Poulsen deal, Mr. Bates was quite active in opposition to the interests of the Oregon-American Lumber Company?

A. Not to my knowledge. I don't think that is true.

Q. Will you examine the proposed Exhibit "D" and say whether or not that is a letter written by you in relation to the Inman-Poulsen deal?

A. Yes, sir.

Q. And as far as you know correctly recites the facts as you recall them, at that time?

A. Yes, sir.

Letter offered in evidence, received without objection and marked

Defendant's Exhibit "D."

OREGON

LUMBER COMPANY

Yeon Building, Portland, Oregon

Jany. 22d, 1921.

Mr. J. M. Eccles,
Ogden, Utah.

Dear Joe:

I now wish to refer to last telephone conversation that we had relative our closing with Inman-Poulsen people on one or the other of their propo-

sitions submitted through Mr. Bates, on January 15th, both of which were wired you in detail.

My best judgment was, everything considered, to close on 3200 acres and I sincerely hope that when yourself and associates analyze you will concur.

Full statement follows:

Cruise used, 340,000,000 @ \$3.00 \$1,020,000.00.

We have following to show for timber sold.

Receipts for taxes	\$ 36,647.36
Receipts stamps—deed	680.00
Difference $4\frac{1}{2}$ & 6%	20,000.00
Interest paid DuBois on the three hundred thousand notes cancelled—Jan. 1st to 20th	740.00
Principal paid DuBois, for [183] which we hold receipt to be endorsed on note No. 1	8,316.00
Draft sent Mr. Royal Eccles	452,000.00
Inman Poulsen notes	180,000.00
Receipt from P A & P R R	21,321.25
Cash in bank	295.39
Cancelled notes Oregon American	300,000.00
	<hr/>
	\$1,020,000.00

Items that think you will not perhaps fully understand, will endeavor, to explain—first two, I think entirely plain and will pass. Third item of \$20,000.00 was an amount agreed upon between Mr. Poulsen and myself for the difference in interest of what old mortgage carried and what he had to pay—if his mortgage run the full time on full amount difference would have been in round figures \$29,000.00—time being 6 years, five months, and ten days and they wanted us to pay full amount in at first, which, of course very unfair—they in the end to reimburse us in event they paid Mr. DuBois less.

Impossible for any one to correctly foretell this amount, but, I felt it worth something to have it out of the way and Mr. Poulsen felt the same and claimed that he had not authorized Mr. Bates to say that we would be refunded at all.

Right or wrong: I did it.

The fourth item \$740.00 I think plain but will say again that it the interest on cancelled notes, which, our cashier has here. These will not annoy you further.

Now comes item number five of \$8,316.00 paid on principal that I am sure you will not understand without explanation. Mr. DuBois claimed on the lands sold \$306,160,000 feet, standing timber but wanted as might naturally be expected to pick out of the deal a little cash for himself—he had come a long way to aid in closing and wanted a mortgage from the Inman-Poulsen people for an even Three Hundred Thousand, so, he stood pat for that which

aided me very much in pulling Bates & Poulsen away from the idea that either our cruise or theirs should be [184] used—you can readily see, how much better for us to handle in the way that I did.

We have the receipt of Mr. DuBois for that amount, as being a payment on note. Right here would like to say that I have had very satisfactory talks with Mr. DuBois, who, stands ready to aid us every way we in turn to assist him (if it comes handy to do so) in making our friend Mr. Kerry take some of his timber when exchange matters come up later as they surely will.

On any sales that we make—provided always they are made to reputable operators, he stands ready to release and made it so plain that we felt it would insult him did we insist on a contract to the effect as we had suggested and a contract with a stipulation such as he would insist upon (that the purchaser should be reputable operator and responsible) would put us in position right along of having still to get his permission.

Item six, speaks for itself. Item seven—four, Forty Five Thousand Dollar Notes, drawing 6% interest here in strong box for whatever disposition is desired.

Item eight. You may criticise this and I assume responsibility for it although, I was urged to go stronger. Situation though just this—we had to pay United Rental as to default that would put them where contract could be cancelled—besides that operating expenses had to be taken care of and these two items amount to nearly half of the

\$21,321.25—balance was for long overdue Board Bills, Grocery Bills, wages of Engineers, etc., etc.

Item nine self-explanatory—of course it will not long remain in the Bank as we will have to spend it.

Item ten, already covered. Now as to our position here.

We figured all of the time, that a sale enabling us to [185] pay our debts here would strengthen us, but, after we make this deal and are called upon to pass upon bills, send the money elsewhere and have to continue to stand off people that have been extremely lenient, but, are becoming naturally more and more insistent, really believe so far as this end is concerned are worse off than ever—to-day, has been exceptionally unpleasant—people calling for and insisting on payment.

We are not criticising anyone but giving you cold facts and you can rest assured that if the above condition long continues people here will think you are worse off than you are.

Past week the most strenuous for years—ever in fact and late Thursday night when we got closed even the “garrulous” Bates was tamed “Papa Poulson” having headed him in more than once.

Bates took one last stand on the rates—saying that if the P A & P could not guarantee rates the Oregon American could and that it was necessary that it be done—they wanted a rate on Logs and Booming of not to exceed \$3.50 per M.

Promptly told him such a procedure illegal, but, that even though there never was a trade it wouldn't be done and that it was now too late for

him to even suggest it—his hopes had been blasted prior on other matters, so, in reality he was in better shape for it.

I cannot close without again saying that Mr. DuBois, right, with us all the way through and while I had not anticipated it feel that his getting the \$8,316.00, which arrived at by taking 6,160,000' and figuring it at \$1.35 per M—the cutting price it having been removed from the mortgage and so far as he concerned from the ground, not, a bad investment, provided, we have other deals to put through. Could have differed with [186] him and might have won my point but, felt proper to do it in his case just what did do.

Got Mr. Poulson's check for \$520,000.00 and figuring \$20,000.00 interest in that is paid would make \$540,000.00. Attach "memo" way Bates had it figured on the 3200 acres as my wire to you will show.

Other prospects will be gone into thoroughly, Monday.

Sincerely,

CHAS. T. EARLY.

As of Jany. 15th.

Poulsen proposition as Bates figures—see wire and confirm.

340,000,000' @ \$3.00\$1,020,000.00

Mortgage to DuBois on our cruise of

359,000,000 \$1.00 per M 359,846.00

660,154.00

(Testimony of Charles T. Early.)

Deduct for interest difference	35,000.00
	<hr/>
	625,154.00
Cash to you	500,000.00
	<hr/>
	\$ 125,154.00

Last named amount in notes.

A glance at our statement first page my letter will show that our cash to Mr. Royal Eccles of \$452,000.00 and the Poulsen notes of \$180,000.00 more than he figured we would have left and besides that we paid lots of things and have "papa's" notes for much more than \$125,154.00.

C. T. E.

Q. In reporting as you did to Mr. J. M. Eccles the result of that transaction, you were making a report then to the representatives in Ogden of the transactions that had been carried on in the sale of a portion of their timber holdings to the Inman-Poulsen Lumber Company, were you not? [187]

A. Yes, I was completing a report; was a daily report made by telephone or telegraph.

Q. Now, isn't it a fact that at that time, as to Mr. Bates' activities as between the contracting parties, isn't it a fact you made this statement: "Past week the most strenuous for years—ever in fact, and late Thursday night when we closed even the 'garrulous' Bates was tamed 'Papa Poulsen' having headed him in more than once." Papa Poulsen was his father-in-law, was he not?

A. Yes.

(Testimony of Charles T. Early.)

Q. "Bates took one last stand on the rates—saying that if the P. A. & P. could not guarantee rates, the Oregon-American could, and that it was necessary that it be done—they wanted a rate on logs and booming of not to exceed three fifty per thousand feet." That is your report, isn't it?

A. Surely.

Q. So at that time he was not working for the interests of the Oregon-American Lumber Company, was he?

A. Well, that is a question of rates there, that he was trying to get fixed, that was delaying the transaction.

Q. For whose benefit was he working when you made the statement?

A. In that instance it would be in the interest of the Inman-Poulsen Company.

Q. Do you mean now to say that during the time he was making this negotiation in this fashion, he was still under general contract of employment as an employee of the Oregon-American Lumber Company?

A. Oh, I don't claim that, because that isn't the case.

Q. That isn't the case. When did this general contract terminate with this, if it isn't the case?

A. When I 'phoned from San Francisco, if it was changed at all it was changed then. It is my understanding it was.

Q. The commissions that were paid on these deals, did you get any portion of them?

(Testimony of Charles T. Early.)

A. Yes, sir. [188]

Q. How much? A. \$17,000.

Q. \$17,000. Was that during the time you were still an employee of the company, too?

A. Yes, sir, but I didn't make the price on the timber and had no understanding as to commission.

Q. Did you report that fact to any officer, or to your Board of Directors?

A. No, sir, because I didn't make the sale.

Q. Do you know who else shared in these commissions? A. No, I do not.

Q. Do you know whether anybody else did or did not? A. No, I do not.

Q. So as a matter of fact, while Bates represented Inman-Poulsen in the deal, and you now contend that the Oregon-American Lumber Company had him under a course of general employment, and he at the same time in turn had you under employment? A. Who did?

Q. Bates? A. No, he did not.

Q. Well, he paid you \$17,000 anyway, didn't he?

A. Yes, he did.

Q. What for?

A. I don't know what for. He said simply he would have to pay it to the Government on his income tax if he didn't.

Q. You don't know what he paid it to you for at all? A. No.

Q. You never even reported that to Mr. David C. Eccles did you? A. I did not do that.

Q. That was one of the things that you never

(Testimony of Charles T. Early.)

took up with anybody in connection with the company? A. No, sir.

Q. Did you ever account to the company in the trust capacity that you then held as its vice-president—did you ever account to the company and turn back into its treasury this \$17,000?

A. No, sir, because I didn't take account of it. It didn't belong to them. [189]

Q. During all this time that you were receiving this commission from Paul Bates upon the transactions that were being carried on by your own people, you were drawing a salary from the Oregon Lumber Company of something like \$12,000 a year, were you not? A. No, sir.

Q. How much? A. \$8,700.00.

Q. And how much expenses?

A. It depended on what they were.

Q. Didn't you have an annual allowance for expenses of something over \$5,000? A. No, sir.

Q. Now then, with reference to these various transactions, what would have been your commission on the Kerry deal with Mr. Bates had it gone through?

A. Wouldn't have been anything as far as I know.

Q. What is your understanding with him in that respect? A. Didn't have any.

Q. But in every deal in which you sat upon one side of the table as an officer of the corporation, and Mr. Bates upon the other buying from your

(Testimony of Charles T. Early.)

company, and a commission was paid, you got your share of it, didn't you?

A. No, sir; I did not. Do you want to know about another transaction? I will be glad to tell you.

Q. I will ask you about the transactions, Mr. Early, as I come to them. At the time that this deal was made, this Inman-Poulsen deal, you understood that a financial crisis had come on the country, and that you had been called to Ogden to meet with the Board of Directors a short time prior to that, and were fully informed as to the desperate financial condition of the Oregon-American Lumber Company, weren't you?

A. Yes, sir.

Q. And at that same period of time, acting in the trust capacity that you did in that deal, you wrote this letter that has last been introduced in evidence here, Exhibit "D," begging that the [190] funds that arose from the sale of this property be left here in any small amount that was possible, to meet the many demands that were being made upon the company, didn't you?

A. Yes, sir.

Q. And at the same time you, as vice-president of this company, received a cutback upon the price that was being paid here of \$17,000, and made no accounting to your company on it?

A. I received that some time later, yes. The company had nothing to do with it.

Q. The only thing the company had anything to

(Testimony of Charles T. Early.)

do with as far as you were informed is when you were working for them, when you were employing Bates. That is correct, isn't it?

A. Oh, no; no, sir.

Mr. DEVINE.—If the Court please, there is such a mass of other matters that have been carried in by all of these various touchings of counsel throughout the number of transactions that I have gone into here that it would take a much longer time. I didn't anticipate that these would have to be met in the early portion of the case, and I want to reserve the right, if it becomes necessary, to recall this witness for further cross-examination upon other details than those which he has already been examined on, and in the submission of records, if it becomes necessary. I don't care to take the Court's time at this time to do it.

COURT.—I understand from plaintiff's counsel that he will probably be recalled.

Redirect Examination.

(Questions by Mr. WILBUR.)

Mr. Early, as I understand it now, with this Inman-Poulson deal and another deal you did get two commissions? A. Yes, sir.

Q. The first one was the one you testified about on cross-examination this morning, when Mr. Bates had felt that he would [191] be glad to give you something, and gave you at that time \$17,000 you said? A. I think so.

Q. And what was it you said this morning about taking that up with Mr. Eccles, the president of

(Testimony of Charles T. Early.)

the company, before you accepted it? I want the jury to understand that.

Mr. DEVINE.—I object to that as not being re-direct examination. That was a volunteered statement, his own explanation of his own conduct. And, further than that, if the Court please, Mr. David C. Eccles, as president of the company, would not change the situation whether put up to him or not.

COURT.—Only for the purpose of clearing up the testimony, that is all. He said something about that.

Q. Yes, I want to know just what was done by Mr. Eccles relative to the first \$17,000 commission.

A. The first time it was mentioned to me by Mr. Bates I told him I couldn't accept it without first taking it up with Mr. Eccles. If it was entirely agreeable to him—

Q. Mr. Eccles was president of the company?

A. Yes, sir—I would be glad to have it and I appreciated his willingness to give it to me. And he had already, I found, discussed it with Mr. Eccles.

Q. Who had discussed it?

A. Mr. Bates. Mr. Eccles told me when I approached him, he said it was perfectly all right. He said if he wants to give all his commission to you I haven't any objection. That covered the first transaction.

Q. And thereupon you accepted it?

(Testimony of Charles T. Early.)

A. Yes, sir.

Q. Now, on the other one that counsel has been talking about here this afternoon, on the Inman-Poulsen deal, and I was asking you this morning about these various things—is that Inman-Poulsen deal in this transaction at all, upon which we are suing? A. I think not. [192]

Q. For compensation? A. No, sir.

Q. You think not? A. I am sure it isn't.

Q. Now, in the first instance, relative to the Inman-Poulsen, so the jury will understand it; may it please the Court, there has been thrown out certain ideas and hints here, and I want to clear it up. On the Inman-Poulsen deal, who first employed Mr. Bates? Was he employed by you or not? Just tell the jury.

A. Well, there had been an Inman-Poulsen transaction up. I think two or three different transactions, been a couple of times anyway. Not just the same each time, but that was revived after the company got into financial difficulties. And that transaction was ultimately consummated, after authority was obtained from Mr. Devine and other members of the Board at Ogden, and I never dreamed of getting any commission from Mr. Bates, or any part of what the Inman-Poulsen people paid him.

Q. Now, in the first instance, was Mr. Bates working in the Inman-Poulsen deal for the Oregon-American, or for Inman-Poulsen?

(Testimony of Charles T. Early.)

A. Well, he took it up at my suggestion, endeavoring to find people that would buy. He took it up with Mr. Collins and Inman-Poulsen, and anyone else that he thought might be interested in that timber, and that was one of the prospects that he took up at that time.

Q. And was there any discussion or division in price as between Inman-Poulsen and the Oregon-American and yourself?

A. Yes. For instance, when I was over at Ogden, I think they authorized me to make a price of two dollars, or something like that, that is on the whole timber but when I got up here I had a different idea of the value of the timber than they had and I thought I could get considerable more, and the first price to Inman-Poulsen was, I think \$3.50; \$3.25 or \$3.50. [193]

Q. Was there any agreement later, after you had told Bates to take it up with whomever he could—any agreement later that whatever payment on that particular deal Mr. Bates got, had to come from Inman-Poulsen?

A. Oh, yes. He finally made a proposition in writing, as I remember, he would give so much net, I think \$3.00 net.

Q. On the Inman-Poulsen deal? A. Yes, sir.

Q. Who made that proposition?

A. I think Mr. Bates made it.

Q. For Inman-Poulsen? A. Yes, sir.

Q. That was a change, then, from the original proposition? A. Yes, sir.

(Testimony of Charles T. Early.)

Q. But it was to be net to you?

A. Oh, yes, his letters so stated and I advised him of the fact.

Q. And that anything that Bates got out of it in the way of compensation, he had to get from Inman-Poulsen? A. Surely.

Q. And on that Inman-Poulsen deal was any money paid to Mr. Bates at all from the Oregon-American? A. No, sir.

Q. And I understand you to say that Mr. Bates is not asking for compensation for this. So that the money that Mr. Bates got, and where he gave you a portion of it, was money that he got from Inman-Poulsen, and not from the Oregon-American? A. Surely.

Q. Now, this timber that was sold to the Inman-Poulsen people was sold for, you say, \$3.00?

A. That is my recollection.

Q. \$3.00. A. \$3.00 per thousand.

Q. And as to the price which you were getting from Inman-Poulsen through Mr. Bates and yourself from Inman-Poulsen, after that did you take that up with Mr. Devine? A. Yes, sir.

Q. And was that sale authorized? A. Yes, sir.

Mr. DEVINE.—If he took it up with me, he took it up by letters, and the conclusion is best expressed by the letters. We object to hearsay testimony. [194]

Mr. WILBUR.—I ask for the contents of the letters. If you think he didn't take it up with you, you have the letters and had better produce them.

(Testimony of Charles T. Early.)

Q. That price was authorized?

Mr. DEVINE.—We object as calling for—

COURT.—If that was in writing the writing is the best evidence.

Q. Did you take it up in writing with them?

A. I was reporting to them from one to three times a day over the telephone, as to the status of these various deals and—

Q. Who did you take it up with by letter?

A. I don't know. I think I probably wrote Mr. Devine and Mr. J. M. Eccles; I was reporting to pretty nearly everybody at that time.

Q. Did you take it up by telephone? A. Yes.

Q. Who did you take it up with by telephone?

A. Talked to Mr. Devine and also to Mr. J. M. Eccles.

Q. What was said over the telephone by Mr. Devine about the price of \$3.00?

A. They authorized an acceptance to close it as soon as possible.

Q. Mr. Devine authorized that over the phone?

A. Yes, sir.

Q. That was the \$3.00 sale. As a matter of fact when they sold out to Keith they only got \$1.78, didn't they?

A. I didn't understand it was so much but it might have been. I thought it was less than \$1.50.

Q. In other words, you got about \$1.22 or \$1.50 more than they got when they sold it, didn't you?

A. Got far more.

(Testimony of Charles T. Early.)

Mr. DEVINE.—Who is “they”? I understand you are claiming here you did that.

Mr. WILBUR.—We will show you some evidence on that before we get through. [195]

Q. How much did they pay for it a thousand?

A. I couldn't say. My understanding was about \$1.50 for the timber. A little less than that.

Q. In other words, you and Mr. Bates in the Inman-Poulsen deal got approximately twice as much as they paid for it?

A. We got more than twice what the Oregon-American paid for it, and I think about twice what the other people paid.

Q. Now you continued to be an officer and representative of the company, you have said, of the Oregon-American here in this state, up to what time?

A. I couldn't give you the date. I think it was late in 1921, or very early in 1922.

Q. Was that before or after the sale of the stock of the Oregon-American to the Central Coal & Coke Company? A. Why, I think that was after.

Q. After the sale to the Central Coal & Coke?

A. Yes, I know I resigned so Mr. Keith could put his own men on the Board.

Q. During the time that the Eccles were interested in them, you were in this position in Oregon?

A. Yes, sir.

Q. And ceased to be in that position when the property was taken over by Keith, of the Central Coal & Coke Company of Kansas City, Missouri?

(Testimony of Charles T. Early.)

A. Yes, sir.

Q. Now, relative to the Kerry deal counsel has been talking about, how did Mr. Bates become first interested in that matter? Was it through any instructions from you, or instructions from the other side, or how?

A. I think that transaction started through Mr. Porter.

Q. Through Mr. Porter? A. Yes, sir.

Q. Mr. Porter was with Kerry, or logging for Kerry? [196]

A. Well, he was independent, and I think he was first investigating on his own responsibility. But he can say as to that better than I.

Q. Now, as to what transpired between Mr. Porter and Bates, as to how they got together, of your own knowledge, I presume you don't know?

A. No, I don't.

Q. I will ask you this question: Whether or not from your own contract or understanding with Mr. Bates, as you had that in July and August, 1917—whether or not under that Mr. Bates was authorized to act for you with Mr. Kerry or with anybody else?

A. Well, that would probably have been authorized, but it wasn't contemplated at the time the arrangement was made. As I testified before noon, it was much longer drawn out and got into a great many more ramifications than we ever anticipated it would.

Q. Now you said in your cross-examination that

(Testimony of Charles T. Early.)

the first time Mr. Kerry saw you you told him that the property wasn't for sale?

A. I did, yes, sir, and at that time it wasn't.

Q. Why was it that the property wasn't for sale when you first—

A. Well, they were trying to finance it, and wanted to hold it, and then particularly were they averse to selling any timber that would furnish tonnage to this railroad that was then under construction.

Q. Had Mr. Bates, as far as you know, had anything to do with Mr. Kerry up to that time, or with Kerry interests?

A. Well, nothing more than kind of going over his railroad properties, I think, when he was looking for an outlet.

Q. I mean as to the sale of the timber?

A. I think not, prior to that.

Q. Then you saw Mr. Kerry after that, when?

A. I saw Mr. Kerry on a Sunday morning. He and his attorney called at my office. [197]

Q. I mean after the time that you had told him that the property was not for sale. Did you have any subsequent talk with him when you told him the property was for sale?

A. I don't think I told him. I don't think I saw Mr. Kerry any more until he was in my office. I wouldn't be positive, but that is my best recollection.

Q. So that the reason for Mr. Kerry coming to

(Testimony of Charles T. Early.)

your office was due to some other influence, you don't know what that was?

A. Well, that was brought about by Mr. Bates and Mr. Porter.

Q. When you had that meeting on Sunday morning, which you say you had there in your office, when was it you say—January 5th?

A. No, no, December 5th.

Q. December 5th; what year? A. 1920.

Q. Who notified you that Mr. Kerry and his attorney Mr. Powell, of Seattle, would be in your office? A. Mr. Bates, as I recall.

Q. Mr. Bates notified you they would be there?

A. Yes, sir.

Q. And at that time between Mr. Kerry and yourself, representing the Oregon-American, what was done relative to the sale, or disposition of that 2400 acres—wasn't it? A. Yes.

Q. 2400 acres to Kerry?

A. Well, the offer had been accepted prior to his coming. There was only a question as to whether or not he could not be induced to pay down additional money. I forget just the amount he was paying. I think it was \$250,000, and that was discussed. And then there was another question about this 2400 acres being released from a general mortgage. When the property was bought there was a million dollars paid on it and a mortgage given on the entire property for \$2,650,000. And if he closed the deal in line with their offer and our acceptance, he wanted the 2400 acres released from

(Testimony of Charles T. Early.)

the general mortgage, and to carry the four and a half per cent rate of interest which the general mortgage did. [198]

Q. That is you mean release the 2400 acres from the general mortgage, and give back a mortgage on just the 2400? A. Yes.

Q. And bearing interest at what per cent?

A. $4\frac{1}{2}$.

Q. What agreement did you make with Mr. Kerry on that line?

Mr. DEVINE.—Just a moment. All these agreements were in writing, weren't they, to Mr. Kerry—this proposal? A. Yes, I think so.

Mr. DEVINE.—Object to that as not the best evidence.

Mr. WILBUR.—I would ask the defendant in this case to produce a letter written by Mr. B. L. Porter to Mr. Paul C. Bates, of Portland, Oregon, November 8, 1920, relative to the disposal of this property. I have a copy here if you haven't the original and are satisfied that this is a copy. We can use this.

Mr. DEVINE.—I believe we have the original.

Q. I will ask if this is a writing or a copy of the writing or proposition that was made by Porter to Bates, to submit to you, his principal?

Mr. DEVINE.—I object to the last portion of that as a conclusion. The letter speaks for itself as to what it is.

COURT.—The letter speaks for itself.

Q. We will refer to it as a copy of it.

(Testimony of Charles T. Early.)

A. That is one of them but there were a number of them.

Offered in evidence, received without objection and marked

Plaintiff's Exhibit 3.

(Copy) Portland, Oregon, November 8, 1920.
Mr. Paul C. Bates,
 Yeon Building,
 Portland, Oregon.

Dear Sir:

You are hereby authorized to submit to the owners [199] Oregon-American Lumber Company or Mr. D. C. Eccles, an offer to purchase timber land described as follows:

Southeast quarter of Section 32, Southwest quarter of Section 33, South Half of Section 34, Southwest quarter of Section 35, and South Half of Section 36, in Township 5 N. 6 W. Also Northwest quarter of Section 5, North Half of Section 4, Southwest Quarter of Section 4, West half of Section 3, North Half of Section 2, all situate in Township 4 North, 6 W., aggregating 2400 acres.

I am willing to pay on a basis of \$3.00 a thousand stumpage, one-half cash and the balance on contract in two years with deed to the land, deferred payments to bear 6% annual interest. I will agree to pay the balance on each quarter section before starting to log, should logging begin prior to date of maturing of deferred payments.

(Testimony of Charles T. Early.)

I should expect signed cruises from the owners showing actual amount of standing timber on the above lands accompanied by an option for thirty days for the purpose of checking said cruisings. On or before expiration of the option I will be ready to close the deal.

Should ~~you~~ be glad to have you take this up with the owners and advise me as soon as you can whether they will consider this proposal.

I remain,

Yours very truly,

B. L. PORTER. (Signed)

Q. Was that referred to you by Mr. Bates, handed to you or not, or when Bates got it, what did he do with it, do you know?

A. That was handed to me or one similar.

Q. What did you do with it?

A. Declined his offer, as I remember it. [200]

Q. Was it communicated to the home office at Ogden or Salt Lake?

A. Why, they must have been furnished a copy. I wouldn't say about the original. It was perhaps kept in the files here.

Q. Now, on this visit on Sunday, did you come to any conclusion or any agreement with Mr. Kerry about the sale?

A. According to my understanding the sale—

Mr. DEVINE.—Just a moment—

Q. What was said? Counsel objects to the understanding. Recite as near as you can the conversation on the substance thereof.

(Testimony of Charles T. Early.)

A. The price and the terms had been agreed upon prior to this meeting. This meeting was for the purpose, as I testified a while ago, to see if we couldn't get a larger payment in cash, and it was with the understanding that we could get this 2400 acres released from the general mortgage, and Mr. Kerry didn't care to pay any more money than his written proposition, down, and said they were ready to close whenever we got the release from Mr. DuBois, Mr. DuBois holding the original mortgage. And he left with the understanding that it was our move and he was ready to take the property whenever the release was furnished.

Q. What understanding was there as to the rate of interest?

Mr. DEVINE.—That is all in writing, as I understand it. Was it not? A. Yes, sir.

Q. On Sunday?

A. Oh, the writing had been carried on, this exchange of letters sometime prior to this Sunday meeting.

Q. On this Sunday, was no writing on that day, was there? A. No, sir.

Q. Wasn't any writing about this deal after that, was there?

A. No, the terms, as far as the price of the timber and the rate of interest, that had all been settled. It wasn't discussed at the Sunday meeting.

Q. I am asking you about the conversation on this day. Was that [201] or was it not reduced to writing? A. No, it was not.

(Testimony of Charles T. Early.)

Q. What was the understanding there as to the rate of interest? A. Four and a half per cent.

Q. Were the terms of the payment agreed on that day? A. Yes, sir.

Mr. DEVINE.—This was oral entirely. I think this man can state what was said. This is asking for a conclusion, and if the terms of payment were agreed upon, is asking for a conclusion. He can state what was said.

COURT.—State what was said.

A. I asked Mr. Kerry if he couldn't make a larger cash payment. He said not very well, they were willing to go through with the deal as per their offer provided we could get the 2400 acres released from the general mortgage, which I felt that we could, and promised him that we could, and he left the office understanding that we would expedite that part of the transaction as much as possible, and whenever we were in a position to release it, he was ready to close.

Q. What was said there as to the amount to be paid down, and the balance of the mortgage to be given?

A. Those matters were simply referred to. I couldn't give you the exact figures. They were referred to as the amount stipulated in their offer.

Q. What was the full amount of that consideration, if you remember?

A. I think it was something over \$800,000.

Q. I show you a telegram here and ask you if you send this telegram to Mr. Devine?

(Testimony of Charles T. Early.)

A. Yes, sir.

Q. That was sent from Portland? A. Yes, sir.

Q. To Mr. Devine at Ogden? A. Yes, sir.

Offered in evidence, received without objection
marked [202]

Plaintiff's Exhibit 4.

WESTERN UNION TELEGRAM.

Portland, Oregon, Nov. 27, 1920.

Mr. J. H. Devine,
Ogden, Utah.

Have tried hours to get you on the phone without success and now wish to advise of having closed with Inman-Poulsen on three hundred sixty-seven million feet at three dollars net, having persuaded them to take the additional westerly from descriptions you have there and closing date to be on or before December thirty-first with their assurance that will expedite and try and close by December fifteenth. Half million cash with difference between mortgage and cash covered by year note bearing six per cent interest and checkers will go in to timber Monday to verify our cruise which must in any event be accepted. Stop. Porter sitting pretty tight on his original offer, which we thought best not to accept the other day, but which could be accepted to-day if think best and if sold at his figure would carry two and half per cent commission, Bates. Call me on the phone quick.

CHAS. T. EARLY.

(Testimony of Charles T. Early.)

Q. Will ask you if you sent this telegram of November 28, 1920, to Mr. Devine? A. Yes, sir.

Offered in evidence, received without objection, marked Plaintiff's Exhibit 5 and read as follows:

Plaintiff's Exhibit 5.

WESTERN UNION TELEGRAM

Portland, Oregon, Nov. 28th, 1920.

Mr. J. H. Devine,
Eccles Building,
Ogden, Utah.

Met Porter to-day and declined his offer of eighth which you have [203] and made him definite proposal as follows. Timber at three twenty-five per thousand, he assuming the mortgage and pay our equity in cash indicating if impossible to pay all cash might consider reasonable time on portion. Stop. He makes new offer as follows: Three dollars and fifteen cents per thousand which would approximately total eight hundred and nineteen thousand, the assuming the mortgage approximating three hundred and fifty-one thousand, leaving balance of four hundred and sixty-eight thousand of which one-half would be paid in cash, remainder on or before two years at six per cent. Stop.

Rather think can do no better as to price, but do feel that might insist on larger cash payment with success and divide the time paper into one or two years which preferable to on or before. Stop.

Digest the above and call me phone as early tomorrow as possible, please.

CHAS. T. EARLY.

(Testimony of Charles T. Early.)

Q. Mr. Early, did you send this telegram to Mr. Bates at San Francisco, relative to this deal? Is that the original telegram? A. Yes, sir.

Mr. WILBUR.—I offer it in evidence.

Mr. DEVINE.—I object to that as absolutely immaterial to any issue in this case.

Mr. WILBUR.—We think it is material. This witness was at that time, so we think we have shown, the general manager, or apparent manager of the company, and it is a telegram to Mr. Bates.

Mr. DEVINE.—The witness has just said that his authority changed. It is a self-serving instrument from this man to Bates, and it is entirely beyond the issues of this case.

COURT.—This is a question can be determined hereafter. [204]

Objection overruled for the present.

Exception saved.

Telegram marked Plaintiff's Exhibit 6 and read as follows:

Plaintiff's Exhibit 6.

WESTERN UNION TELEGRAM.

December 2, 1902, Portland, Oregon.

Paul C. Bates,

care Palace Hotel,

San Francisco, California.

Have just advised Porter our acceptance their last proposition he assuring me that definite dates would be made on notes and will try to get addi-

(Testimony of Charles T. Early.)

tional cash payment stop Is now phoning to arrange for meeting date for written commitments.

CHAS. T. EARLY.

Recross-examination.

(Questions by Mr. DEVINE.)

Mr. Early, the proposition which you have discussed here as taking place on Sunday, being a general discussion between you and Mr. Powell and Mr. Kerry, was here in Portland, wasn't it?

A. It is not a general discussion.

Q. Well, we will say a very particular discussion; but at any rate at that time, as I understood you, some letter or commitment had passed between the Oregon-American Lumber Company and Mr. Porter? A. I think so.

Q. Have you that copy? A. Have it?

Q. Yes.

A. I may have, Mr. Devine, I will be able to look.

Q. I won't ask you to take the time now. I haven't a copy of it, and I wish when you are released from the stand here you would look through your files for it.

Q. The Sunday discussion that you spoke of took place on December 5, 1920, didn't it?

A. That is my recollection, yes, sir.

Q. That is a letter written by you to David C. Eccles, the president [205] of the company?

A. Yes, sir.

Mr. DEVINE.—I offer this in evidence.

Marked Defendant's Exhibit "E" and read as follows:

Defendant's Exhibit "E."

December 5, 1920.

Mr. David C. Eccles,
Ogden, Utah.

Dear Sir:

Mr. Kerry and a Mr. Powell, an attorney from Seattle, also a stockholder in the Kerry companies, have just left after spending more than an hour here discussing the proposed deal and various things among which general conditions.

Mr. Powell says that as he views the matter it all contingent on what Mr. DuBois does and with that in shape, intimates that meeting of their stockholders can be called and deal ratified.

They feel cannot deviate from the terms proposed, viz.: cash \$234,000, two year note like amount and of course the assumption of the DuBois mortgage; however, I feel that when we do get definitely in shape that we can do something better on terms, or rather payments, but no use going in to it to-day as we are not closing. Amounts I have given above are approximately correct.

Leave for Baker to-night. Expect to go through to Prairie to-morrow and back to Bates. From there to Baker and will probably be there all week, so can reach me there with mail or wires.

Yours truly,

CHARLES T. EARLY.

(Testimony of Charles T. Early.)

Q. "Going back to Bates" here happens to be a town, doesn't it, Mr. Early? A. Yes, sir.

Q. Now you understood at the time you wrote that letter that Mr. Kerry's proposal was based upon the fact that he must get the [206] ratification of his Board of Directors or stockholders in order to conclude this deal, didn't you?

A. Yes, that was my understanding. It was my understanding also that he was the whole thing as far as the stockholders were concerned.

Q. At any rate he and his representative, Mr. Powell, made the reservation then and at all times, contingent upon what they might do at the expiration of the option, which was January 25, 1921, wasn't it?

A. Well, not exactly. Mr. Kerry and Mr. Powell left and said that if we got—Mr. Kerry particularly said that if we got the release he was ready to close; that they would—the stockholders and board would do whatever he said. Mr. Powell was one of the Board and he was the other, and there was only three, I think, on the Board.

Q. At any rate that was the reservation you referred to your company, wasn't it?

A. Yes, and of course naturally and sale would be ratified.

Q. Now, as a final conclusion to this whole matter, the Oregon-American Lumber Company, through you, accepted in total every condition of the written instrument, and you submitted to Mr. Kerry deeds

(Testimony of Charles T. Early.)

covering the property, together with abstracts, on the 4th day of January, 1921, didn't you?

A. I couldn't say as to that; they were submitted at the same time.

Q. And the Oregon-American Lumber Company, as far as the written proposition from Mr. Kerry was concerned, prior to the exercising of his option, had submitted to him acceptance of all particulars of his written option, hadn't they?

A. We accepted his proposition. I am not certain whether the final proposition was in writing or not. I think it was.

Q. And after that, having submitted papers on behalf of your [207] company carrying out the deal identically as he proposed it he exercised his reservation to submit it to his stockholders, and told you that he wouldn't accept it; and made you a counter proposal to trade timber, didn't he?

A. No, sir.

Q. This is a letter from you to Mr. Powell, isn't it? A. To Mr. Kerry.

Q. To Mr. Kerry I mean.

A. Yes, on an entirely different proposition. Absolutely had nothing to do with the other deal.

Mr. DEVINE.—I offer it in evidence.

Mr. WILBUR.—I understand Mr. Early has said this is an entirely different proposition. I don't think it makes any difference, but don't think it is anything to do with the case.

Mr. DEVINE.—I disagree very heartily with that statement, and contend it has to do with the

transaction under discussion here, and offer it for that reason.

Exception saved.

Marked Defendant's Exhibit "F" and read as follows:

Defendant's Exhibit "F."

January 7, 1921.

Mr. A. S. Kerry,
C/o Mallory Hotel,
Portland, Oregon.

Dear Mr. Kerry:

This will acknowledge receipt of your letter of yesterday, together with plat and legal descriptions of timber to which your letter refers.

I could not recommend to my people that they entertain the proposition that you make, and I regret very much that the original deal has gotten into the shape that it has. It has been my thought since talking with Mr. Powell and yourself on December 5th., that the closing depended altogether on the willingness of Mr. Dubois to release the timber in question, and when [208] we were finally advised it was agreeable to him to do so, I had deed prepared and the same is now executed conveying the timber to your company. Further than that I had abstracts brought down to date, which are now in my office, feeling, as I have already stated above.

It places the writer in a rather embarrassing position with his people, but as they have been advised of every move made, think will fully un-

(Testimony of Charles T. Early.)

derstand all when your letter of yesterday is placed before them.

Yours very truly,

OREGON-AMERICAN LUMBER COMPANY.

By Chas. T. Early.

Q. Now, Mr. Early, you don't mean to say that that reference to the original transaction in that letter is something different and another transaction than you have been testifying about here?

A. There is this difference: The original transactions was agreed upon as you know. The sale was authorized by you, and a rate of $4\frac{1}{2}\%$ interest was promised Mr. Kerry. That was promised in writing and you undoubtedly have the original letter. On January 2d, without my knowing it, Mr. Kerry was advised that the rate would be raised from $4\frac{1}{2}\%$, which he had been promised verbally but not in writing, to 6%.

Q. Who advised him of that?

A. Who advised him?

Q. Yes. A. Mr. Paul Bates, I think.

Q. Mr. Paul Bates?

A. Yes, and that is what spoiled the first deal. Then Mr. Kerry made another proposition which was largely a trading proposition and included some of the same timber, but much that wasn't in the original deal.

Q. Isn't it a fact that when Mr. Paul Bates during your absence from Portland, Oregon, and while you were in Baker, Oregon, in [209] some fashion got in touch with Mr. Kerry and said that

(Testimony of Charles T. Early.)

your company was going to insist upon 6%, and you were advised of it, and that you called your principals at Ogden and were advised immediately to inform Mr. Kerry that Mr. Bates had no authority in that particular, and you did write a letter to Mr. Kerry advising him that you would adhere to the 4½%?

A. I think that is true, but the deal was spoiled.

Q. That is true. But it wasn't until three days after you advised Mr. Kerry that Mr. Bates had no authority to interfere in any fashion with the rate of interest that Mr. Kerry exercised the option and determined not to purchase the property?

A. I couldn't say as to the length of time.

Q. But it was about that, wasn't it?

A. Couldn't be very long from the 2d to the 7th.

Q. And it is a fact too, is it not, that you advised Mr. Bates that he had no authority to represent the Oregon-American Company in a discussion of the interest problems with Mr. Kerry?

A. I told him that he had no business to go to see Mr. Kerry and try to repudiate the written and verbal understanding that we already had. And I told Mr. David C. Eccles the same.

Q. And when you wrote the letter of January 7th, when you wrote stating to him that you had all of your papers prepared, your deeds ready and executed, your abstracts ready, you expected and so advised him that you would carry the transaction through as far as the Oregon-American Lum-

(Testimony of Charles T. Early.)

ber Company was concerned, upon the identical basis agreed upon, didn't you? A. I think so.

Q. So that your company at no time, or at all, ever repudiated in any particular, or at all, the deal with Mr. Kerry, did they?

A. I couldn't answer that. Other people will have to answer that for themselves.

Q. But as far as you are informed, that is the fact, isn't it? [210] A. No, sir; it is not.

Q. And other than the interference that Mr. Bates injected into the deal, and which you repudiated on behalf of your company, you know of no other change or proposal made by any other person or persons, do you?

A. I am convinced that there were other parties mixing in it, but they can testify for themselves. I can't testify for them.

Q. There was nobody authorized, as far as you were concerned, as a representative of the Oregon-American Lumber Company at that time—there was nobody advised by you to change the deal in any particular, was there?

A. No, sir; I wouldn't have stood for it, because I had agreed to do a certain thing, and my company was bound to have gone through on that basis.

Q. And your company stood directly back of you on your advices from your superiors at Ogden, on that platform, didn't they? That they would go directly through?

(Testimony of Charles T. Early.)

A. Yes, I don't think they were trying to repudiate that at all.

Q. As a matter of fact, you didn't feel during that period of time, or at any other time, that after a deal was accepted by the company at Ogden, Utah, that you had any authority to change it, did you? A. No, sir; I did not.

Q. You didn't have any such authority?

A. Never attempted to go over the head of my superiors.

Q. And as far as you knew, outside of the people at Ogden, Utah, nobody else had authority to direct you in any phase of this dealing with Mr. Kerry, did they?

A. They were not directing me. There were other people that had authority, Mr. Devine. You know about that better than I do.

Q. Who were they? A. Mr. David C. Eccles. [211]

Q. Did he have authority at that time?

A. I don't think it had been taken away from him. You said it was going to be, but I don't think you had notified him.

Q. I hand you herewith, Mr. Early, a deposition taken in this case, to which is attached a letter dated Portland, Oregon, January 6, 1921, purporting to be signed by A. S. Kerry, and addressed to Charles T. Early, asking you if this is the first advice that you received from Mr. Kerry in respect to the closing of this proposed Kerry deal?

(Testimony of Charles T. Early.)

A. From Mr. Kerry direct, I think that is true.

Q. This is the first intimation that you had, or the first advice that you had that the written proposal from the Oregon-American Lumber Company submitted to the Kerry people was not accepted?

Mr. WILBUR.—He said the first direct.

A. The first from Mr. Kerry. I got into Portland either January 1st or 2d, and learned about the change in this rate of interest, which I understood had caused Mr. Kerry to demur, and that it would perhaps spoil the deal, and that was really the first information, but this is the first that I had direct from Mr. Kerry, and my answer to that was written after consulting with the president, Mr. David Eccles.

Q. You were advised from Ogden, Utah, as early as October, 1920, that every transaction from that time on with reference to the Oregon-American Lumber Company, the Portland, Astoria & Pacific Railway Company, and the Nehalem Boom Company, as far as the stockholders were concerned, must be approved by myself, were you not? A. I think so.

Q. So that you knew, when you returned to Portland, Oregon, in January, 1921, that no person had any authority to change any of the items of the proposal to the Kerry people, with reference to the sale of this timber, didn't you? [212]

A. That was the understanding I got over that. That you were to notify all parties who had been

(Testimony of Charles T. Early.)

handling it that they wouldn't have authority any longer. I don't know whether you did or not.

Q. But you knew, and immediately acting upon that knowledge, notified Mr. Kerry that no matter what Mr. Bates had said to him about interest rates, that those stated in his proposal still maintained?

A. Oh, yes, I advised Mr. Kerry.

Mr. DEVINE.—Since this is a part of the deposition, I will ask to introduce it in the record by reading it.

Read as follows:

Portland, Oregon, January 6, 1921.

Mr. Charles T. Early,

Oregon Timber Company,

Portland, Oregon.

Dear Mr. Early:

Concerning the proposition you made to sell our company two hundred and sixty million feet of timber in Twp. four, five and six, I find that our stockholders are afraid of present conditions and are therefore not willing to buy. Personally I am willing to take a chance and have quick assets to the amount of about \$140,000.00 that I will place at the disposal of our company to be returned to me when they have sufficient funds available to pay. I am sure that they would go with me on this as it was the three and not the six and a half year note that frightened them.

I am anxious to block our holdings and take what you have on top of Green Mountain and trade you

(Testimony of Charles T. Early.)

what we have that would come on an adverse grade to our road. If you will agree to trade us lands described on separate sheet for our lands, also described on sheet, we will pay the difference (less the DuBois mortgage \$1.35 M with 4½% in cash.

* * * * *

[213]

Q. Now the letter that I showed you a moment ago that bears the identification mark "F" is in answer to this letter, is it not? (No answer.) Now, Mr. Kerry's letter here where he says "I am sure that they would go with me on this as it was the three and not the six and a half year note that frightened them." In other words, you understood at that time that there were two classes of deferred payments; one was the assumption of the DuBois mortgage, which still had six and half years to run. Is that correct?

A. I think that is about it.

Q. That was a four and half per cent mortgage?

A. Yes.

Q. In the original transaction? A. Yes.

Q. And that was 4½% money that Mr. Bates during your absence presumed to go over and tell Mr. Kerry was a rate of 6%?

A. Mr. Bates will have to answer for himself.

Q. That is what you were informed?

A. That he had gone over, yes.

Q. Answer the question, Mr. Early. That was the 6% money that Mr. Bates spoke to him about—the DuBois notes?

(Testimony of Charles T. Early.)

A. Yes, what was going to Mr. DuBois was raised, the rate of interest, from 4½ to 6%.

Q. And that is the correction you made as quickly as you heard he had interfered in that particular, wasn't it? A. Yes.

Q. The three year notes were always in the transaction 6% notes, were they not?

(No answer.)

Q. Mr. Early, you said—this is not really upon your direct examination, but partly on that and partly on the other—you said that you had resigned from this company along sometime in August or September of 1921? A. August, I think.

Q. Your resignation was demanded, was it not, Mr. Early? A. No, sir.

Q. I will ask you if it isn't a fact, Mr. Early, that the latter part of August or the first of September, 1920, for the first time [214] it was discovered that you had knowledge of a transaction involving \$140,000 worth of steel rails that you knew had not been and were not available, had been purchased and paid for to a man named A. C. Callan here at Portland, Oregon, and when your board of directors and the representatives of the company found that you had knowledge of the fact that Mr. Callan had appropriated this \$140,000, that knowledge coming to you as early as December, 1920, you not disclosing to the officers of your company until the latter part of August, that your resignation was then demanded?

A. No, sir, that is not true.

(Testimony of Charles T. Early.)

Mr. WILBUR.—I object to that as incompetent, immaterial, irrelevant and not recross.

A. It is absolutely untrue anyhow.

COURT.—Goes to the credibility of the witness.

Mr. WILBUR.—He has answered that it is not true.

Q. Is it a fact, is it not, Mr. Early, that you did have full knowledge of a transaction with one A. C. Callan and the Oregon Lumber Company, by virtue of which they purchased some six hundred odd tons of steel rails, and that you had knowledge of the fact that the auditor of the Oregon-American Lumber Company had advanced approximately \$140,000, and that when the audit of that company was being made by Price-Waterhouse the fact that you knew that Callan didn't have the rails that had been paid for, and with that knowledge, as late as May, 1921, you caused or directed the auditor of the company to pay an additional \$30,000 to Mr. Callan, then knowing that he had already defaulted upon some \$140,000 worth of rails that had been purchased?

A. That is partially true but mostly untrue. The \$30,000 or \$15,000 was advanced, and there was obtained for that some thirty thousand odd dollars worth of rails, and it was advanced upon [215] the advice of well known attorneys like Huntington & Wilson and Judge McCamant, and that part of the deal, as far as I am concerned, I am proud of it. We put up \$15,000 and got \$34,000 for it. The facts in relation to that deal

(Testimony of Charles T. Early.)

are these: that there was a contract entered into for the purchase of steel rails by the company, supposing that Mr. Callan owned them. It developed later that he had only partially paid and the United States Government had title, and it is a fact that the auditor paid without getting a bill of sale, the last \$75,000 on these rails, which really caused the trouble. Now to go back to the beginning of the transaction, there was a certain amount paid with the understanding that there would be other moneys paid within a certain time. You had paid, according to my recollection, up to about \$50,000, and Mr. Callan was in position on more than one occasion to take that \$50,000 or the \$75,000, whatever it might have been, and you had no recourse whatever.

Q. The fact remains, Mr. Early, that in your conference with the Board of Directors of this company and its representatives, from the time that you came to Ogden in 1920, in October, until September of 1921, and you had been then reporting, as you said a while ago that it was your duty to report, to the Board of Directors and officers, throughout 1921, and you never made any disclosure of the fact that this \$140,000 had been advanced and lost?

A. It wasn't advanced and lost but report was made on it to the president of the company at Chicago.

Q. There was never any report made to myself, who was directing the affairs from October, 1920, or to the Board of Directors although you had

(Testimony of Charles T. Early.)

knowledge of that, until it was discovered here about the first of September, 1921? Isn't that true? A. No, I don't think so.

Q. You don't think so?

A. No, sir, because it was reported to Mr. Eccles. [216]

Q. But it wasn't reported to any other person or persons, was it by you?

A. It wasn't reported to the Board. I wasn't reporting to the Board. Never met them until late in 19—.

Q. You didn't report to me either, did you?

A. You were out here and knew all about it, were told all about it when you were here.

Q. That was in September, 1921?

A. I don't think so.

Q. And it was following that, was it not, Mr. Early, that your connection with this company, with the Oregon Lumber Company, with the Sumpter Valley Railroad Company, the Mount Hood Railroad Company, and all other companies in which the common money was spread out—that your resignation was taken as an officer of this company?

A. My resignation was taken, yes, but I defy anybody to show one word in writing, or to refer to any conversation where my resignation was ever asked for. It never was asked for.

Mr. DEVINE.—With the reservation I made at the last cross-examination, that is all.

Redirect Examination.

Q. These last letters that have been spoken

(Testimony of Charles T. Early.)

about here, this Callan matter, as I understand, is a matter where Mr. Callan, or some man from whom you purchased rails, didn't have the rails to deliver. is that the idea? I never heard of it before.

A. We had a contract with the government in the Spruce Corporation, I think, for several hundred tons of rails. We made advances on them, and finally Mr. Callan made deliveries. We did get a lot of rail. This payment Mr. Devine refers to, after we knew that he didn't have the rails, didn't own the rails, was made, as I say, on the advice of as good attorneys as this town has.

Q. Who were your attorneys?

A. Huntington & Wilson, and Judge McCamant. As far as making that [217] advance and getting that amount of rails, I think it was a good deal. Whenever you can put up \$15,000 and get \$34,000 it is a good thing to do.

Q. You acted on the advice of your attorneys, Judge McCamant and Huntington & Wilson, on that matter? A. Yes, sir.

Q. Relative to your being asked to resign, I will show you this letter and this copy of resolution presented to you, and ask you if this resolution and letter was received by you, and that resolution for your services after thirty-three years with this company? A. Yes, sir.

Mr. WILBUR.—In view of the criticism of Mr. Early, I will be very glad to have these papers go in evidence.

Mr. DEVINE.—I have no objection to their being introduced in evidence, if material here.

Marked Plaintiff's Exhibit 7 and read as follows:

Plaintiff's Exhibit 7.

I, Royal Eccles, Secretary of the Oregon Lumber Company, a corporation organized and existing under the laws of the State of Utah, with its resident place of business in the City of Ogden, County of Weber, State of Utah, do hereby certify that at a duly convened meeting of the Board of Directors of the said Oregon Lumber Company, held at the office of the company, 621 David Eccles Building, City of Ogden, County of Weber, State of Utah, on Tuesday, the 20th day of September, 1921, the following resolution was passed:

RESOLUTION.

WHEREAS the Board of Directors of this company has this day accepted the resignation of Mr. Charles T. Early as Vice-President and General Manager of this company; and

WHEREAS such resignation has been accepted with due consideration and keen regret upon the part of this Board; and [218]

WHEREAS it is meet and proper that at this time this Board should officially record its acknowledgment of the past services of Mr. Charles T. Early in behalf of the company, and should officially express its appreciation of his spirit of helpfulness to the future management of this com-

pany manifested in his tender of services to the company in the future;

Now, therefore, be it RESOLVED that the Board of Directors of the Oregon Lumber Company hereby officially records its acknowledgment of the long and faithful service rendered by Mr. Charles T. Early as Vice-President and General Manager of this company, and also in other capacities covering thirty-three years of continuous service to this company.

RESOLVED FURTHER that this Board is of the opinion that in behalf of the members thereof and also the stockholders of the company, it is fitting that at this time of severance of Mr. Chas. T. Early from his connection with the company this Board should express to him on behalf of the members thereof and of the stockholders of the corporation their sense of obligation for the meritorious work which has been done by him during the period of his connection with the company, and they do further express their well wishes for his success in his future fields of labor.

RESOLVED FURTHER that this board is deeply appreciative of the offer of Mr. Chas. T. Early to co-operate with the future officers of the company to render them such aid and information as he may possess in matters pertaining to the affairs of the company to the furtherance of a successful management of its affairs, and that this Board, in the same spirit in which the offer is made, will be glad to accept such services in solving the future problems of the company.

RESOLVED FURTHER that the secretary be authorized and directed to spread these resolutions upon the minutes of the [219] meeting of the Board of Directors, and to send a certified copy of same to Mr. Charles T. Early.

I hereby certify that the above Resolution is a true and correct copy of the Resolution as spread upon the minutes of a meeting of the Board of Directors held September 20th, 1921, and is still in full force and effect and has never been repealed or revoked.

IN WITNESS WHEREOF, I have hereunto set my hand with the seal of the corporation this 22d day of September, 1921.

ROYAL ECCLES,
Secretary.

Mr. DEVINE.—That is the Oregon Lumber Company, is it not?

Mr. WILBUR.—Yes, as it appears here. And as has been stated here, these are closely allied. You have been trying, however, to pass some aspersions on this man who has been working for these people for thirty-three years. I have a letter here from Mr. Royal Eccles I would like to read also:

Marked Plaintiff's Exhibit 8 and read as follows:

Plaintiff's Exhibit 8.

DAVID ECCLES COMPANY.

Ogden, Utah, September, 24, 1921.

Mr. Chas. T. Early,
Portland, Oregon.

Dear Charlie:

At this time of your resignation I desire to take occasion to express my regret and esteem to a continuous service of a full thirty-three years which you have had with the Oregon Lumber Company—a service which began in menial labor and which in the course of time was not only worthy, but attained many of [220] the most important executive responsibilities in the management of the company. Such a service record must be something more to you than a mere satisfaction—indeed it is to other which is nothing less than an admiration.

Indeed, if I may presume to acknowledge a tenure of service of twenty-five successful years which you had associated under the direction of my father, it is in itself a testimony of loyalty and ability. I can but appreciate that his death did not confine its personal loss to us alone, for, in the many ramifications which his passing has subsequently provoked, it has had its consequences on others as well as us. The extent only has varied—the analysis always the same.

Assuring you of my sincere well wishes for suc-

(Testimony of Charles T. Early.)

cess in your future fields of endeavor, whatever they may be, I remain,

Sincerely yours,

ROYAL ECCLES.

Q. One question which is not properly redirect, that I would like to ask. Mr. Early, during the period when you had this first general contract with Mr. Bates, up to the time the stock was finally sold to the Central Coal & Coke Company, of Kansas City, as to the work that Mr. Bates was doing, can you tell the jury in a general way how often you came in contact with Mr. Bates, and how continuous it was? I want to know how much work he was doing, or how little, and how often you were in touch with him in discussing these various matters that you have testified to.

A. That would be very hard to say. I was in Portland perhaps twenty-five to thirty-three and a third per cent of my time, and when I was in the city most every day or two we were discussing either in person or over the telephone, or exchanging letters, but just how often—it would be quite frequent—how often I couldn't say at this time. [221]

Mr. DEVINE.—That is all, subject to the same reservation I had a little while ago.

Witness excused.

Mr. AGEE.—I move the Court to strike out all the evidence of Mr. Early concerning any contract between him and between the Oregon-American Lumber Company and Mr. Bates, and the contract

of employment, upon the ground that there is a total lack of evidence to show any authority upon the part of Mr. Early to make any such contract as that alleged in the complaint or to make any arrangement or contract with Mr. Bates concerning the disposition of any property of the defendant in this case, or for the purchase of any property that he alleges that he negotiated for the purchase of, upon the theory that there is no presumption that a person who occupies the position of director and vice-president has any authority to involve a corporation in the expenditure of such large sums of money as this arrangement would involve this company in; that there is no authority even for a general manager or president to make a contract which would involve the company in such an extraordinary expenditure as appears in this case, the rule being, as I understand it, that a general manager, even as testified to here in the way that Mr. Early has alluded to himself as general manager—while as a matter of fact he was only vice-president and director—but even if he were general manager, and conceding him to be general manager that that reserves to him not the power of the board of directors but only such power as is necessary to carry out the administration of the properties of the corporation.

Arguments.

Whereupon proceedings were adjourned until ten o'clock to-morrow morning. [222]

Wednesday, April 3, 1923, 10 A. M.

COURT.—It seems to me, as the evidence now stands, if we are to take the record as it now stands, that there is no sufficient evidence to show that Mr. Early had authority to enter into this contract. It was made within a month of the organization of the corporation, and the only evidence of his authority is his own statement that he assumed that he was general manager and was in the employ of the company, but there is no evidence of any employment by the company, or that he ever received any compensation from the company, or that the company had held him out, up to the time this contract was entered into at least, as representing it in any way, and this particular contract, made in August, 1917, is the one upon which this action is based, and it is the one upon which this plaintiff must either stand or fall in this litigation. Unless Early had authority, either expressed or implied at the time he entered into that contract, it is not binding on the company unless there is proof of subsequent acquiescence and ratification, and there is no evidence offered, up to this time at least, to show any acquiescence or ratification by the company.

A corporation acts through its board of directors originally. It may and of course does act later through duly authorized agents but an agent to represent a corporation and to bind it by his contracts must have authority to do so, either expressed authority or implied authority arising from

the manner in which he is held out by the corporation, or it must acquiesce in and ratify his act.

Mr. Early testified that he never at any time reported this contract with Mr. Bates to the board of directors, and it is quite clear that Mr. Eccles, as president of the concern, [223] had no authority to either enter into the contract or to ratify it, because his authority as president alone was confined to presiding over the deliberations of the board, and he had no authority to make a contract of the kind that is sued on in this suit, unless he was authorized by his board of directors to do so, and there is no such evidence up to this time in this case.

More than that, I have examined this complaint with great deal of care and with possibly one exception the services that are sought to be recovered in this case were either for contracts relating to the purchase or lease of property by this company, the sale of its stock or sale of its property, and even a general manager would have no authority to enter into a contract of that kind and bind his company, and if he had no authority to do it, he certainly had no authority to employ another to act for him.

So that as the record now stands the evidence is not sufficient, in my judgment, to show that Mr. Early had any authority to bind the company by the particular contract upon which this action is based.

These transactions that occurred later, the railroad transaction and some of these others, if they

were ratified, subsequently ratified by the company, might constitute a separate cause of action but that is not the one upon which this action is prosecuted, and so the Court is of the opinion that the motion made is well taken and that the evidence should be stricken out.

Mr. SENN.—We desire to make a record in this case, and I presume that is the only way we can proceed—to put on our evidence.

COURT.—You can make an offer of proof; no use taking up the time of the Court presenting it in detail. [224]

Mr. SENN.—So we will have the record complete to take to a higher court.

COURT.—If you wish to make a record you can do so.

Mr. SENN.—We can dictate to the reporter what we expect to show if the Court desires us to do it that way.

COURT.—In a general way, just a general statement, not in detail. I suppose your offer would be simply evidence tending to support the allegations of the complaint.

Mr. SENN.—Yes.

Mr. WILSON.—I suggest that the jury be excused while making the offer.

COURT.—I don't know that that will make any difference; it will probably never get to the jury.

Mr. SENN.—(Makes offer of proof.) That on behalf of the plaintiff the evidence will disclose that Mr. Bates performed all the services set forth in the complaint, and performed them in the manner

set forth in the complaint; that he reported such transactions and performances of the services set forth in the complaint to David C. Eccles at Ogden, Utah, and also at Portland, Oregon, and kept Mr. David C. Eccles fully informed as to all the services which he rendered for this corporation. That it will also show that Mr. David C. Eccles, during July and August of 1917, particularly in August, 1917, and later, instructed and requested Mr. Bates to perform these services, at least a large part of them, and that under the instructions of David Eccles, and also under the instructions of Charles T. Early he did perform these services, expended the money—advanced the money set forth in the complaint, and spent the time for which he is seeking to recover.

We wish to also show that on the Kerry deal he produced a purchaser ready, willing and able to purchase that [225] property; that he was guaranteed and it was agreed in writing that he should be paid all in excess of three dollars which the purchaser might agree to pay for that property, and that the deal was not consummated because of the act of the defendant corporation refusing to abide by the contract entered into with Mr. Porter, A. S. Kerry and the Kerry Timber Company.

We also expect to show and prove that the corporation, the Oregon-American Lumber Company, received the fruits and benefits of the services performed by Mr. Bates in that the proposition of the lease of the United Railway was accepted by it, a contract was entered into by it with the United

Railway Company for the rental of that property for a period of ninety-nine years at \$45,000 a year.

We shall also prove that in the Keith transaction, where he was instructed and requested both by Mr. Early and David C. Eccles, the president of the company, to interview people who might purchase this property, that he did secure the Central Coal & Coke Company as purchasers of this stock; that he was ordered and directed to find a purchaser for either the stock or the timber-land, they informing him that they could transfer their property either by stock transfer or by transfer of the property itself, and that in accordance with this contract Mr. Bates produced this purchaser, and this purchaser did purchase from the defendant company this stock.

COURT.—Purchaser from whom? The defendant or the owners of this stock?

Mr. SENN.—From the company because 316 shares of the stock were held by the president in trust as treasury stock; and also that the stockholders assigned and set over their stock to the Central Coal & Coke Company, and that the price paid by the Central Coal & Coke Company was seven million dollars for this [226] transfer, and that he was promised and agreed to be paid by the defendant the sum of two and a half per cent as a measure of compensation and for his services in this transaction. In other words, we will be able to show and we offer to show that the statements and allegations set forth in the complaint are true. We will also show that a demand

for these services has been made and that the payment thereof has been refused, and that the charges and expenses as alleged in the complaint are reasonable.

And on that evidence and that statement of proof, offer of proof, we contend we are entitled to go to this jury. And we also offer to prove that our evidence will support each and every one of the allegations and elements set forth in the complaint.

COURT.—The specific items?

Mr. SENN.—Yes.

Mr. AGEE.—To this offer we object upon the ground it is incompetent, no proper foundation laid for it, and the proof offered does not tend to establish the authority of Mr. Early to make the contract in question, as the greater portion of the offer goes to the proof of the contract and not to the question of authority to make it.

COURT.—Very well. What further procedure do you desire to take in this case? Your offer is overruled.

Mr. SENN.—Save an exception.

Mr. AGEE.—We move that the jury be instructed to return a verdict for the defendant.

Mr. SENN.—We take an exception to the ruling of the Court directing a verdict.

COURT.—Now, gentlemen, in the view of the Court [227] there is only one verdict this jury can render and that is one in favor of the defendant, and I will ask some one of you gentlemen to sign this verdict. It shows on its face it is done

by direction of the Court, so the Court is responsible for the verdict.

In the District Court of the United States for the
District of Oregon.

PAUL BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY,
Defendant.

I, Mary E. Bell, being first duly sworn, depose and say that I acted as official reporter in the above-entitled court and cause, that I faithfully and truly reported all the proceedings therein on the trial thereof, and that the foregoing is a full, true and correct transcript of the evidence and all the proceedings had in the trial of the above matter, and the whole thereof.

[Seal]

MARY E. BELL.

Subscribed and sworn to before me this 25th day of May, 1923.

F. S. SENN,

Notary Public for Oregon.

Comm. expires July 9, 1924. [228]

And now because the foregoing matters and things are not of record in this case, I, Robert S. Bean, District Judge of the above-entitled court, and the Judge trying the above-entitled action do hereby certify that the foregoing bill of exceptions truly states all the proceedings had before me on

the trial of the above action and contains all the evidence, both oral and written, introduced by each of said parties throughout said trial together with the rulings of the Court on the motions made, exceptions taken, and on the questions of law duly presented at said trial, and all the exhibits introduced by both parties, being Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7 and 8 and Defendant's Exhibits "A," "B," "C," "D," "E" and "F"; and that said bill of exceptions was duly prepared and submitted within the time allowed by the rules of this Court and is now signed and settled as and for the bill of exceptions in the above-entitled action and the same is ordered made a part of the record in said action.

R. S. BEAN,

Judge of the Above-entitled Court.

Dated this 23d day of June, 1923.

Due service of the above bill of exceptions was acknowledged this 23d day of June, 1923, and the same is satisfactory.

WM. A. MUNLY,

Of Attorneys for Defendants.

Filed June 23, 1923. G. H. Marsh, Clerk. [229]

AND AFTERWARDS, to wit, on the 13th day of July, 1923, there was duly filed in said court, a praecipe for transcript, in words and figures as follows, to wit: [230]

Praecipe for Transcript of Record.

- (1) Complaint.
- (2) Motion to file amended complaint.
- (3) Order on same.
- (4) Motion to separate amended complaint into paragraphs.
- (5) Order overruling motion.
- (6) Motion requiring plaintiff to elect whether he would rely upon *quantum meruit* or upon mixed contract.
- (6½) Order overruling motion to elect.
- (7) Demurrer of defendant to amended complaint.
- (8) Order overruling demurrer.
- (9) Decision on demurrer.
- (10) Answer to amended complaint.
- (11) Reply.
- (12) Motion to file second amended complaint.
- (12½) Second amended complaint.
- (14) Order on same.
- (15) Verdict of the jury.
- (16) Judgment on verdict.
- (17) Bill of exceptions.
- (18) Petition for writ of error.
- (19) Assignments of error.
- (20) Order allowing writ.
- (21) Bond.

- (22) Order certifying original exhibits.
- (23) Citation.

F. S. SENN.

WM. A. MUNLY.

Filed July 13, 1923. G. H. Marsh, Clerk. [231]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from 3 to 231, inclusive, constitute the transcript of record on writ of error in the case in said court in which Paul C. Bates is plaintiff and plaintiff in error and the Oregon-American Lumber Company, a Utah corporation, is defendant and defendant in error; that the said transcript of record has been prepared by me in accordance with the praecipe for transcript filed by said plaintiff in error, and is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said praecipe, as the same appear of record and on file at my office and in my custody.

I further certify that the cost of the said transcript is \$65.05, and that the same has been paid by said plaintiff in error.

I return, with the said transcript of record attached thereto the original writ of error and the original citation filed in said cause.

In Testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said District, this 24th day of July, 1923.

[Seal]

G. H. MARSH,
Clerk. [232]

[Endorsed]: No. 4063. United States Circuit Court of Appeals for the Ninth Circuit. Paul C. Bates, Plaintiff in Error, vs. Oregon-American Lumber Company, a Utah Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Oregon.

Filed July 26, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
District of Oregon.

No. L—8889.

PAUL C. BATES,

Plaintiff,

vs.

OREGON-AMERICAN LUMBER COMPANY, a
Utah Corporation,

Defendant.

Order Extending Time to and Including August 1, 1923, to File Record and Docket Cause.

Based upon the stipulation herein, it is

ORDERED, ADJUDGED and DECREED that the plaintiff and the defendant are hereby granted to and including July 1, 1923, in which to make amendments to the proposed bill of exceptions herein, and that the defendant is hereby granted to and including July 1, 1923, in which to object to the proposed bill of exceptions or any amendment thereto, and the time for settling and agreeing to the proposed bill of exceptions is hereby extended to and including July 1, 1923.

It is further ORDERED and ADJUDGED that the time for docketing and filing the transcript on appeal in the Circuit Court of Appeals for the Ninth Circuit of the United States, is hereby enlarged and extended to and including August 1, 1923.

R. S. BEAN,
Judge.

Dated this 14th day of June, 1923.

[Endorsed]: No. 4063. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including July 1, 1923, to File Record and Docket Cause. Filed Jun. 25, 1923. F. D. Monckton, Clerk. Refiled Jul. 26, 1923. F. D. Monckton, Clerk.

EC,
1923.